§ 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.
	31:95.	R.S. § 278.

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

PART I—ORGANIZATION AND ADMINISTRATION

Chap.		Sec.
1001.	**Definitions**	**10001**
1003.	**Reserve Components Generally**	**10101**
1005.	**Elements of Reserve Components**	**10141**
1006.	**Reserve Component Commands**	**10171**
1007.	**Administration of Reserve Components**	**10201**
1009.	**Reserve Forces Policy Boards and Committees**	**10301**
1011.	**National Guard Bureau**	**10501**
1013.	**Budget Information and Annual Reports to Congress**	**10541**

PART II—PERSONNEL GENERALLY

1201.	**Authorized Strengths and Distribution in Grade**	**12001**
1203.	**Enlisted Members**	**12101**
1205.	**Appointment of Reserve Officers**	**12201**
1207.	**Warrant Officers**	**12241**
1209.	**Active Duty**	**12301**
1211.	**National Guard Members in Federal Service**	**12401**
1213.	**Special Appointments, Assignments, Details, and Duties**	**12501**
1214.	**Ready Reserve Mobilization Income Insurance**	**12521**
1215.	**Miscellaneous Prohibitions and Penalties**	**12551**
1217.	**Miscellaneous Rights and Benefits**	**12601**
1219.	**Standards and Procedures for Retention and Promotion**	**12641**
1221.	**Separation**	**12681**
1223.	**Retired Pay for Non-Regular Service**	**12731**
1225.	**Retired Grade**	**12771**

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

Chap.		Sec.
1401.	**Applicability and Reserve Active-Status Lists**	**14001**
1403.	**Selection Boards**	**14101**
1405.	**Promotions**	**14301**
1407.	**Failure of Selection for Promotion and Involuntary Separation**	**14501**
1409.	**Continuation of Officers on the Reserve-Active Status List and Selective Early Removal[1]**	**14701**
1411.	**Additional Provisions Relating to Involuntary Separation**	**14901**

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

1601.	**Training Generally. [No present sections]**	
1606.	**Educational Assistance for Members of the Selected Reserve**	**16131**
1607.	**Educational Assistance for Reserve Component Members Supporting Contingency Operations and Certain Other Operations**	**16161**
1608.	**Health Professions Stipend Program**	**16201**
1609.	**Education Loan Repayment Programs**	**16301**
1611.	**Other Educational Assistance Programs**	**16401**

PART V—SERVICE, SUPPLY, AND PROCUREMENT

1801.	**Issue of Serviceable Material to Reserve Components. [No present sections]**	
1803.	**Facilities for Reserve Components**	**18231**
1805.	**Miscellaneous Provisions**	**18501**

AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, § 527(c), Oct. 28, 2004, 118 Stat. 1894, added item for chapter 1607.

1999—Pub. L. 106–65, div. A, title V, § 551(a)(2), Oct. 5, 1999, 113 Stat. 614, added item for chapter 1611.

1997—Pub. L. 105–85, div. A, title V, § 515(b), Nov. 18, 1997, 111 Stat. 1733, substituted ''12551'' for ''[No present sections]'' in item for chapter 1215.

1996—Pub. L. 104–201, div. A, title XII, § 1211(a)(2), Sept. 23, 1996, 110 Stat. 2691, added item for chapter 1006.

Pub. L. 104–106, div. A, title V, § 512(a)(2), title XV, § 1501(b)(1), Feb. 10, 1996, 110 Stat. 305, 495, added item for chapter 1214 and substituted ''Repayment Programs'' for ''Repayments'' in item for chapter 1609.

PART I—ORGANIZATION AND ADMINISTRATION

Chap.		Sec.
1001.	Definitions	10001
1003.	Reserve Components Generally	10101
1005.	Elements of Reserve Components	10141
1006.	Reserve Component Commands	10171
1007.	Administration of Reserve Components	10201
1009.	Reserve Forces Policy Boards and Committees	10301
1011.	National Guard Bureau	10501
1013.	Budget Information and Annual Reports to Congress	10541

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XII, § 1211(a)(2), Sept. 23, 1996, 110 Stat. 2691, added item for chapter 1006.

[1] So in original. Does not conform to chapter heading.

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 OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(f)(2), Feb. 10, 1996, 110 Stat. 501, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(1)(E)(ii), Nov. 18, 1997, 111 Stat. 1905, provided that: ''The amendments made by sections 1672(a), 1673(a) (with respect to chapters 541 and 549), 1673(b)(2), 1673(b)(4), 1674(a), and 1674(b)(7) of the Reserve Officer Personnel Management Act [Pub. L. 103–337, amending the tables of chapters for subtitle B, part II of subtitle B, subtitle C, part II of subtitle C, subtitle D, and part II of subtitle D of this title and the tables of sections for chapters 539, 573, and 861 of this title] shall take effect on the effective date specified in section 1691(b)(1) of the Reserve Officer Personnel Management Act [set out as a note below] (notwithstanding section 1691(a) of such Act [set out as a note below]).''

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 OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XII, § 1201, Sept. 23, 1996, 110 Stat. 2689, provided that: ''This title [enacting chapter 1006 and sections 5143, 5144, and 10543 of this title, amending sections 113, 641, 3038, 8038, and 10216 of this title and section 404 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under this section and sections 10171 and 10543 of this title, and repealing provisions set out as a note under section 3074 of this title] may be cited as the 'Reserve Forces Revitalization Act of 1996'.''

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'.''

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 104–201, div. A, title XII, § 1202, Sept. 23, 1996, 110 Stat. 2689, provided that: ''The purpose of this title [see Short Title of 1996 Amendment note above] is to revise the basic statutory authorities governing the organization and administration of the reserve components of the Armed Forces in order to recognize the realities of reserve component partnership in the Total Force and to better prepare the American citizen-soldier, sailor, airman, and Marine in time of peace for duties in war.''

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

Sec.
10101. Reserve components named.
10102. Purpose of reserve components.
10103. Basic policy for order into Federal service.
10104. Army Reserve: composition.
10105. Army National Guard of the United States: composition.
10106. Army National Guard: when a component of the Army.
10107. Army National Guard of the United States: status when not in Federal service.
10108. Navy Reserve: administration.
10109. Marine Corps Reserve: administration.
10110. Air Force Reserve: composition.
10111. Air National Guard of the United States: composition.
10112. Air National Guard: when a component of the Air Force.
10113. Air National Guard of the United States: status when not in Federal service.
10114. Coast Guard Reserve.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 515(b)(4)(E), Jan. 6, 2006, 119 Stat. 3235, substituted ''Navy Reserve'' for ''Naval Reserve'' in item 10108.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(2)(B), Feb. 10, 1996, 110 Stat. 495, substituted ''into Federal service'' for ''of National Guard into Federal service'' in item 10103.

§ 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(Z), Jan. 6, 2006, 119 Stat. 3233.)

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).

AMENDMENTS

2006—Par. (3). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

CHANGE OF NAME

Pub. L. 109–163, div. A, title V, § 515(a)(1), Jan. 6, 2006, 119 Stat. 3233, provided that: ''The reserve component of the Armed Forces known as the Naval Reserve is redesignated as the Navy Reserve.''

Pub. L. 109–163, div. A, title V, § 515(h), Jan. 6, 2006, 119 Stat. 3237, provided that: ''Any reference in any law, regulation, document, record, or other paper of the United States to the Naval Reserve, other than a reference to the Naval Reserve regarding the United States Naval Reserve Retired List, shall be considered to be a reference to the Navy Reserve.''

Pub. L. 108–375, div. A, title V, § 517, Oct. 28, 2004, 118 Stat. 1884, which authorized the Secretary of the Navy, with the President's approval, to redesignate the Naval Reserve as the ''Navy Reserve'', was repealed by Pub. L. 109–163, div. A, title V, § 515(a)(2), Jan. 6, 2006, 119 Stat. 3233.

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PILOT PROGRAM ON ENHANCED QUALITY OF LIFE FOR MEMBERS OF THE ARMY RESERVE AND THEIR FAMILIES

Pub. L. 109–163, div. A, title V, § 520, Jan. 6, 2006, 119 Stat. 3238, provided that:

''(a) PILOT PROGRAM REQUIRED.—

''(1) IN GENERAL.—The Secretary of the Army shall carry out a pilot program to assess the feasibility and advisability of using a coalition of military and civilian community personnel in order to enhance the quality of life for members of the Army Reserve and their families.

''(2) LOCATIONS.—The Secretary shall carry out the pilot program in areas of the United States in which members of the Army Reserve and their families are concentrated. The Secretary shall select one area in two States for purposes of the pilot program.

''(b) PARTICIPATING PERSONNEL.—A coalition of personnel under the pilot program shall include—

''(1) military personnel; and

''(2) appropriate members of the civilian community, such as clinicians and teachers, who volunteer for participation in the coalition.

''(c) REPORT.—Not later than April 1, 2007, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the pilot program carried out under this section. The report shall include—

''(1) a description of the pilot program;

''(2) an assessment of the benefits of using a coalition of military and civilian community personnel in order to enhance the quality of life for members of the Army Reserve and their families; and

''(3) such recommendations for legislative or administrative action as the Secretary considers appropriate in light of the pilot program.''

ANNUAL REVIEW

Pub. L. 108–375, div. A, title V, § 513(h), Oct. 28, 2004, 118 Stat. 1882, provided that:

''(1) The Secretary of Defense shall annually review the reserve components of the Armed Forces with regard to—

''(A) the roles and missions of the reserve components; and

''(B) the compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States.

''(2) The Secretary shall submit a report of the annual review, together with any comments and recommendations that the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

''(3) The first review under paragraph (1) shall take place during fiscal year 2006.''

PAY OF ADMINISTRATION, TRAINING, AND SUPPLY MAINTENANCE TECHNICIANS FOR ARMY RESERVE CONTINGENT UPON RESERVE STATUS

Pub. L. 104–61, title VIII, § 8016, Dec. 1, 1995, 109 Stat. 654, provided that none of the funds appropriated for Department of Defense during and after fiscal year 1996 were to be obligated for pay of any individual who was initially employed after Dec. 1, 1995, as technician in administration and training of Army Reserve and maintenance and repair of supplies issued to Army Reserve unless such individual was also military member of Army Reserve troop program unit that he or she was employed to support, prior to repeal by Pub. L. 105–85, div. A, title V, § 522(e), Nov. 18, 1997, 111 Stat. 1735.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, § 8015, Sept. 30, 1994, 108 Stat. 2620.

Pub. L. 103–139, title VIII, § 8016, Nov. 11, 1993, 107 Stat. 1440.

Pub. L. 102–396, title IX, § 9019, Oct. 6, 1992, 106 Stat. 1904.

Pub. L. 102–172, title VIII, § 8018, Nov. 26, 1991, 105 Stat. 1175.

Pub. L. 101–511, title VIII, § 8018, Nov. 5, 1990, 104 Stat. 1878.

Pub. L. 101–165, title IX, § 9027, Nov. 21, 1989, 103 Stat. 1135.

Pub. L. 100–463, title VIII, § 8045, Oct. 1, 1988, 102 Stat. 2270–25.

Pub. L. 100–202, § 101(b) [title VIII, § 8055], Dec. 22, 1987, 101 Stat. 1329–43, 1329–72.

Pub. L. 99–500, § 101(c) [title IX, § 9054], Oct. 18, 1986, 100 Stat. 1783–82, 1783–111, and Pub. L. 99–591, § 101(c) [title IX, § 9054], Oct. 30, 1986, 100 Stat. 3341–82, 3341–111.

Pub. L. 99–190, § 101(b) [title VIII, § 8059], Dec. 19, 1985, 99 Stat. 1185, 1212.

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8076], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98–212, title VII, § 783, Dec. 8, 1983, 97 Stat. 1453.

RETENTION IN ACTIVE STATUS OF NATIONAL GUARD OR RESERVE TECHNICIANS UNTIL AGE SIXTY

Pub. L. 104–61, title VIII, § 8017, Dec. 1, 1995, 109 Stat. 655, provided that: ''Notwithstanding any other provision of law, during the current fiscal year and hereafter, the Secretaries of the Army and Air Force may authorize the retention in an active status until age sixty of any person who would otherwise be removed from an active status and who is employed as a National Guard or Reserve technician in a position in which active status in a reserve component of the Army or Air Force is required as a condition of that employment.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, § 8016, Sept. 30, 1994, 108 Stat. 2620.

Pub. L. 103–139, title VIII, § 8018, Nov. 11, 1993, 107 Stat. 1441.

Pub. L. 102–396, title IX, § 9022, Oct. 6, 1992, 106 Stat. 1905.

Pub. L. 102–172, title VIII, § 8022, Nov. 26, 1991, 105 Stat. 1176.

Pub. L. 101–511, title VIII, § 8022, Nov. 5, 1990, 104 Stat. 1879.

Pub. L. 101–165, title IX, § 9032, Nov. 21, 1989, 103 Stat. 1136.

Pub. L. 100–463, title VIII, § 8052, Oct. 1, 1988, 102 Stat. 2270–26.

Pub. L. 100–202, § 101(b) [title VIII, § 8064], Dec. 22, 1987, 101 Stat. 1329–43, 1329–73.

Pub. L. 99–500, § 101(c) [title IX, § 9063], Oct. 18, 1986, 100 Stat. 1783–82, 1783–112, and Pub. L. 99–591, § 101(c) [title IX, § 9063], Oct. 30, 1986, 100 Stat. 3341–82, 3341–112.

Pub. L. 99–190, § 101(b) [title VIII, § 8073], Dec. 19, 1985, 99 Stat. 1185, 1214.

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8106], Oct. 12, 1984, 98 Stat. 1904, 1943.

§ 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 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; amended Pub. L. 108–375, div. A, title V, § 511, Oct. 28, 2004, 118 Stat. 1877.)

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).

AMENDMENTS

2004—Pub. L. 108–375 struck out '', during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization,'' after ''whenever''.

§ 10103. Basic policy for order into Federal service

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 National 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(2)(A), Feb. 10, 1996, 110 Stat. 495.)

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).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''into Federal service'' for ''of the National Guard and reserve components to active duty'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

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

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.

§ 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; Pub. L. 104–106, div. A, title V, §§ 514, 515, title VII, § 704(b), Feb. 10, 1996, 110 Stat. 307, 308, 372, 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. PRIOR ACTIVE-DUTY PERSONNEL.

''(a) ADDITIONAL PRIOR ACTIVE DUTY OFFICERS.—The Secretary of the Army shall increase the number of qualified prior active-duty officers in the Army National Guard by providing a program that permits the separation of officers on active duty with at least two, but less than three, years of active service upon condition that the officer is accepted for appointment in the Army National Guard. The Secretary shall have a goal of having not fewer than 150 officers become members of the Army National Guard each year under this section.

''(b) ADDITIONAL PRIOR ACTIVE DUTY ENLISTED MEMBERS.—The Secretary of the Army shall increase the number of qualified prior active-duty enlisted members in the Army National Guard through the use of enlistments as described in section 8020 of the Department of Defense Appropriations Act, 1994 (Public Law 103–139) [107 Stat. 1441]. The Secretary shall enlist not fewer than 1,000 new enlisted members each year under enlistments described in that section.

''(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.

''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 Selected Reserve.

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

''(a) REVIEW.—Whenever an officer in an Army Selected Reserve 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 Selected Reserve 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) COVERAGE OF SELECTED RESERVE COMBAT AND EARLY DEPLOYING UNITS.—(1) Subsection (a) applies to officers in all units of the Selected Reserve that are designated as combat units or that are designated for deployment within 75 days of mobilization.

''(2) Subsection (a) shall take effect with respect to officers of the Army Reserve, and with respect to officers of the Army National Guard in units not subject to subsection (a) as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 [Feb. 10, 1996], at the end of the 90-day period beginning on such date of enactment.

''(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 NONDEPLOYABLE PERSONNEL ACCOUNT.

''(a) ESTABLISHMENT OF PERSONNEL ACCOUNT.—The Secretary of the Army shall establish a personnel accounting category for members of the Army Selected Reserve to be used for categorizing members of the Selected Reserve 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 Selected Reserve has completed the minimum training necessary for deployment, the member may not be assigned to fill a position in a Selected Reserve 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 Selected Reserve enters the Army Selected Reserve, the member has not completed the minimum training required for deployment, the member shall be discharged.

''(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 Selected Reserve from the Selected Reserve 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.

''[SECS. 1117, 1118. Repealed. Pub. L. 104–106, div. A, title VII, § 704(b), Feb. 10, 1996, 110 Stat. 372.]

''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 and the Army Reserve.

''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—

''(1) that each ground combat maneuver brigade of the Army National Guard that (as determined by the Secretary) is essential for the execution of the National Military Strategy be associated with an active-duty combat unit; and

''(2) that combat support and combat service support units of the Army Selected Reserve that (as determined by the Secretary) are essential for the execution of the National Military Strategy be associated with active-duty units.

''(b) RESPONSIBILITIES.—The commander (at a brigade or higher level) of the associated active duty unit for any National Guard unit or Army Selected Reserve unit that (as determined by the Secretary under subsection (a)) is essential for the execution of the National Military Strategy shall be responsible for—

''(1) approving the training program of that unit;

''(2) reviewing the readiness report of that unit;

''(3) assessing the manpower, equipment, and training resources requirements of that unit; and

''(4) validating, not less often than annually, the compatibility of that 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 specify 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).

§ 10108. Navy Reserve: administration

(a) The Navy 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(AA), (3)(F), Jan. 6, 2006, 119 Stat. 3233, 3234.)

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).

AMENDMENTS

2006—Pub. L. 109–163, § 515(b)(3)(F), substituted ''Navy Reserve'' for ''Naval Reserve'' in section catchline.

Pub. L. 109–163, § 515(b)(1)(AA), substituted ''Navy Reserve'' for ''Naval Reserve'' in subsecs. (a) and (b).

§ 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).

§ 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 ad-

ministered, 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).

§ 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.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

Sec.
10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories.
10142. Ready Reserve.
10143. Ready Reserve: Selected Reserve.
10144. Ready Reserve: Individual Ready Reserve.
10145. Ready Reserve: placement in.
10146. Ready Reserve: transfer from.
10147. Ready Reserve: training requirements.
10148. Ready Reserve: failure to satisfactorily perform prescribed training.
10149. Ready Reserve: continuous screening.
10150. Ready Reserve: transfer back from Standby Reserve.
10151. Standby Reserve: composition.
10152. Standby Reserve: inactive status list.
10153. Standby Reserve: status of members.
10154. Retired Reserve.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(3), Feb. 10, 1996, 110 Stat. 496, struck out ''generally'' after ''Reserve'' in item 10142.

§ 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 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.

§ 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 Homeland Security 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 10144. Ready Reserve: Individual Ready Reserve

(a) 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.

(b)(1) Within the Individual Ready Reserve of each reserve component there is a category of members, as designated by the Secretary concerned, who are subject to being ordered to active duty involuntarily in accordance with section 12304 of this title. A member may not be placed in that mobilization category unless—

(A) the member volunteers for that category; and

(B) the member is selected for that category by the Secretary concerned, based upon the needs of the service and the grade and military skills of that member.

(2) A member of the Individual Ready Reserve may not be carried in such mobilization category of members after the end of the 24-month period beginning on the date of the separation of the member from active service.

(3) The Secretary shall designate the grades and military skills or specialities of members to be eligible for placement in such mobilization category.

(4) A member in such mobilization category shall be eligible for benefits (other than pay and training) as are normally available to members of the Selected Reserve, as determined by the Secretary of Defense.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 105–85, div. A, title V, § 511(a), Nov. 18, 1997, 111 Stat. 1728.)

AMENDMENTS

1997—Pub. L. 105–85 designated existing provisions as subsec. (a) and added subsec. (b).

§ 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 authority of the Secretary concerned under the preceding sentence may not be delegated—

(1) to a civilian officer or employee of the military department concerned below the level of Assistant Secretary; or

(2) to a member of the armed forces below the level of the lieutenant general or vice admiral in an armed force with responsibility for military personnel policy in that armed force.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 108–136, div. A, title V, § 513, Nov. 24, 2003, 117 Stat. 1460.)

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).

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136 substituted last sentence of introductory provisions and pars. (1) and (2) for ''The Secretary concerned may not delegate his authority under the preceding sentence.''

§ 10146. Ready Reserve: transfer from

(a) Subject to subsection (c) and under regulations prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

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

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 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 Homeland Security 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE

Section 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.''

§ 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.''

§ 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 personal 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 Homeland Security 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; amended

Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

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

EFFECTIVE DATE OF 2002 AMENDMENT

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

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; Ex. Ord. No. 13286, § 67, Feb. 28, 2003, 68 F.R. 10630, 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 Homeland Security 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.

§ 10150. Ready Reserve: transfer back from Standby Reserve

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 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, 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; amended Pub. L. 107–107, div. A, title V, § 517(a), Dec. 28, 2001, 115 Stat. 1094.)

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).

AMENDMENTS

2001—Par. (2). Pub. L. 107–107 struck out ''upon their request'' after ''Retired Reserve''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 517(g), Dec. 28, 2001, 115 Stat. 1096, provided that: ''The amendments made

by this section [enacting sections 12108 and 12244 of this title and amending this section and sections 14513 to 14515 of this title] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 28, 2001].''

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

Pub. L. 103–337, div. A, title III, § 377, Oct. 5, 1994, 108 Stat. 2737, as amended by Pub. L. 104–106, div. A, title XV, § 1501(d)(1), Feb. 10, 1996, 110 Stat. 500; Pub. L. 105–85, div. A, title X, § 1073(d)(1)(E)(i), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 109–163, div. A, title V, § 515(h), Jan. 6, 2006, 119 Stat. 3237, 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 Navy 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 completed 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 or who after November 30, 1994, transferred to the Retired Reserve under section 10154(2) of title 10, United States Code, without having completed the years of service required under section 12731(a)(2) of such title for eligibility for retired pay under chapter 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 1006—RESERVE COMPONENT COMMANDS

Sec.
10171. United States Army Reserve Command.
10172. Navy Reserve Force.
10173. Marine Forces Reserve.
10174. Air Force Reserve Command.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 515(b)(4)(F), Jan. 6, 2006, 119 Stat. 3235, substituted ''Navy Reserve'' for ''Naval Reserve'' in item 10172.

§ 10171. United States Army Reserve Command

(a) COMMAND.—The United States Army Reserve Command is a separate command of the Army commanded by the Chief of Army Reserve.

(b) CHAIN OF COMMAND.—Except as otherwise prescribed by the Secretary of Defense, the Secretary of the Army shall prescribe the chain of command for the United States Army Reserve Command.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Army—

(1) shall assign to the United States Army Reserve Command all forces of the Army Reserve in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Army specified in section 3013 of this title, shall assign all such forces of the Army Reserve to the commander of the United States Atlantic Command.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689.)

IMPLEMENTATION SCHEDULE FOR RESERVE COMPONENT COMMANDS

Section 1211(c) of Pub. L. 104–201 provided that: ''Implementation of chapter 1006 of title 10, United States Code, as added by subsection (a), shall begin not later than 90 days after the date of the enactment of this Act [Sept. 23, 1996] and shall be completed not later than one year after such date.''

§ 10172. Navy Reserve Force

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Navy, with the advice and assistance of the Chief of Naval Operations, shall establish a Navy Reserve Force. The Navy Reserve Force shall be operated as a separate command of the Navy.

(b) COMMANDER.—The Chief of Navy Reserve shall be the commander of the Navy Reserve Force. The commander of the Navy Reserve Force reports directly to the Chief of Naval Operations.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Navy—

(1) shall assign to the Navy Reserve Force specified portions of the Navy Reserve other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands all such forces assigned to the Navy Reserve Force under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(BB), (3)(G), Jan. 6, 2006, 119 Stat. 3233, 3234.)

AMENDMENTS

2006—Pub. L. 109–163, § 515(b)(3)(G), substituted ''Navy Reserve'' for ''Naval Reserve'' in section catchline.

Pub. L. 109–163, § 515(b)(1)(BB), substituted ''Navy Reserve'' for ''Naval Reserve'' wherever appearing in text.

§ 10173. Marine Forces Reserve

(a) ESTABLISHMENT.—The Secretary of the Navy, with the advice and assistance of the Commandant of the Marine Corps, shall establish in the Marine Corps a command known as the Marine Forces Reserve.

(b) COMMANDER.—The Marine Forces Reserve is commanded by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, reports directly to the Commandant of the Marine Corps.

(c) ASSIGNMENT OF FORCES.—The Commandant of the Marine Corps—

(1) shall assign to the Marine Forces Reserve the forces of the Marine Corps Reserve stationed in the continental United States other

than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands (through the Marine Corps component commander for each such command) all such forces assigned to the Marine Forces Reserve under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

§ 10174. Air Force Reserve Command

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Air Force, with the advice and assistance of the Chief of Staff of the Air Force, shall establish an Air Force Reserve Command. The Air Force Reserve Command shall be operated as a separate command of the Air Force.

(b) COMMANDER.—The Chief of Air Force Reserve is the Commander of the Air Force Reserve Command. The commander of the Air Force Reserve Command reports directly to the Chief of Staff of the Air Force.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Air Force—

(1) shall assign to the Air Force Reserve Command all forces of the Air Force Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Air Force specified in section 8013 of this title, shall assign to the combatant commands all such forces assigned to the Air Force Reserve Command under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

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 Ready Reserve: requirement of notification of change of status.
10206. Members: 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.
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.
10216. Military technicians (dual status).
10217. Non-dual status technicians.
10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title VII, § 732(c), Jan. 6, 2006, 119 Stat. 3352, struck out ''periodic'' before ''physical'' in item 10206.

1999—Pub. L. 106–65, div. A, title V, §§ 522(a)(2), 523(b), Oct. 5, 1999, 113 Stat. 597, 598, struck out ''military'' after ''status'' in item 10217 and added item 10218.

1997—Pub. L. 105–85, div. A, title V, §§ 522(h)(2), 523(a)(2), Nov. 18, 1997, 111 Stat. 1736, 1737, inserted ''(dual status)'' after ''technicians'' in item 10216 and added item 10217.

1996—Pub. L. 104–106, div. A, title V, § 513(c)(2), title XV, § 1501(b)(4), Feb. 10, 1996, 110 Stat. 306, 496, struck out ''Individual'' after ''Members of'' in item 10205, substituted ''Reserve'' for ''reserve'' in item 10211, and added item 10216.

§ 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; amended Pub. L. 104–106, div. A, title IX, § 903(f)(4), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.)

AMENDMENTS

1996—Pub. L. 104–106, § 903(a), (f)(4), which directed that this section be amended, eff. Jan. 31, 1997, to read ''The official in the Department of Defense with responsibility for overall supervision of reserve component affairs of the Department of Defense is the official designated by the Secretary of Defense to have that responsibility.'', was repealed by Pub. L. 104–201.

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.

§ 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 Homeland Security, 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

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

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 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 Homeland Security 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

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

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 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 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 Homeland Security 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

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

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 10206. Members: physical examinations

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

(1) have a comprehensive medical readiness health and dental assessment on an annual basis, including routine annual preventive health care screening and periodic comprehensive physical examinations in accordance with regulations prescribed by the Secretary of Defense that reflect morbidity and mortality risks associated with the military service, age, and gender of the member; and

(2) execute and submit to the Secretary concerned on an annual basis documentation of

the medical and dental readiness of the member to perform military duties.

(b) A member of the Individual Ready Reserve or inactive National Guard shall be examined for physical fitness as necessary to determine the member's physical fitness for—

(1) military duty or promotion;

(2) attendance at a school of the armed forces; or

(3) other action related to career progression.

(c) 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.

(d) 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; amended Pub. L. 107–107, div. A, title V, § 516, Dec. 28, 2001, 115 Stat. 1094; Pub. L. 109–163, div. A, title VII, § 732(a), (b), Jan. 6, 2006, 119 Stat. 3351, 3352.)

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).

AMENDMENTS

2006—Pub. L. 109–163, § 732(b), struck out ''periodic'' before ''physical'' in section catchline.

Subsec. (a)(1). Pub. L. 109–163, § 732(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''be examined as to the member's physical fitness every five years, or more often as the Secretary concerned considers necessary; and''.

Subsec. (a)(2). Pub. L. 109–163, § 732(a)(2), substituted ''to the Secretary concerned on an annual basis documentation of the medical and dental readiness of the member to perform military duties'' for ''annually to the Secretary concerned a certificate of physical condition''.

2001—Subsec. (a). Pub. L. 107–107, § 516(a)(1), (2), substituted ''Selected Reserve'' for ''Ready Reserve'' in introductory provisions and redesignated concluding provisions as subsec. (c).

Subsec. (a)(1). Pub. L. 107–107, § 516(b), substituted ''the member's physical fitness'' for ''his physical fitness''.

Subsec. (b). Pub. L. 107–107, § 516(a)(4), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 107–107, § 516(a)(2), redesignated concluding provisions of subsec. (a) as (c).

Subsec. (d). Pub. L. 107–107, § 516(a)(3), redesignated subsec. (b) as (d).

§ 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 sustainment 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

Provisions similar to those in this section 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).

§ 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).

§ 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 reen-

listed 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).

§ 10216. Military technicians (dual status)

(a) IN GENERAL.—(1) For purposes of this section and any other provision of law, a military technician (dual status) is a Federal civilian employee who—

(A) is employed under section 3101 of title 5 or section 709(b) of title 32;

(B) is required as a condition of that employment to maintain membership in the Selected Reserve; and

(C) is assigned to a civilian position as a technician in the organizing, administering, instructing, or training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

(2) Military technicians (dual status) shall be authorized and accounted for as a separate category of civilian employees.

(3) A military technician (dual status) who is employed under section 3101 of title 5 may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the primary duties described in paragraph (1):

(A) Supporting operations or missions assigned in whole or in part to the technician's unit.

(B) Supporting operations or missions performed or to be performed by—

(i) a unit composed of elements from more than one component of the technician's armed force; or

(ii) a joint forces unit that includes—

(I) one or more units of the technician's component; or

(II) a member of the technician's component whose reserve component assignment is in a position in an element of the joint forces unit.

(C) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(i) active-duty members of the armed forces;

(ii) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(iii) Department of Defense contractor personnel; or

(iv) Department of Defense civilian employees.

(b) PRIORITY FOR MANAGEMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) As a basis for making the annual request to Congress pursuant to section 115(c)[1] of this title for authorization of end strengths for military technicians (dual status) of the Army and Air Force reserve components, the Secretary of Defense shall give priority to supporting authorizations for military technicians (dual status) in the following high-priority units and organizations:

(A) Units of the Selected Reserve that are scheduled to deploy no later than 90 days after mobilization.

(B) Units of the Selected Reserve that are or will deploy to relieve active duty peacetime operations tempo.

(C) Those organizations with the primary mission of providing direct support surface and aviation maintenance for the reserve components of the Army and Air Force, to the extent that the military technicians (dual status) in such units would mobilize and deploy in a skill that is compatible with their civilian position skill.

(2) For each fiscal year, the Secretary of Defense shall, for the high-priority units and organizations referred to in paragraph (1), seek to achieve a programmed manning level for military technicians (dual status) that is not less than 90 percent of the programmed manpower structure for those units and organizations for military technicians (dual status) for that fiscal year.

(3) Military technician (dual status) authorizations and personnel shall be exempt from any requirement (imposed by law or otherwise) for reductions in Department of Defense civilian personnel and shall only be reduced as part of military force structure reductions.

(c) INFORMATION REQUIRED TO BE SUBMITTED WITH ANNUAL END STRENGTH AUTHORIZATION REQUEST.—(1) The Secretary of Defense shall include as part of the budget justification documents submitted to Congress with the budget of the Department of Defense for any fiscal year the following information with respect to the end strengths for military technicians (dual status) requested in that budget pursuant to section 115(c)[1] of this title, shown separately for each of the Army and Air Force reserve components:

(A) The number of military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(B) The number of technicians other than military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(C) The number of military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(D) The number of technicians other than military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(2)(A) If the budget submitted to Congress for any fiscal year requests authorization for that fiscal year under section 115(c)[1] of this title of a

[1] See References in Text note below.

military technician (dual status) end strength for a reserve component of the Army or Air Force in a number that constitutes a reduction from the end strength minimum established by law for that reserve component for the fiscal year during which the budget is submitted, the Secretary of Defense shall submit to the congressional defense committees with that budget a justification providing the basis for that requested reduction in technician end strength.

(B) Any justification submitted under subparagraph (A) shall clearly delineate the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those reductions).

(d) UNIT MEMBERSHIP REQUIREMENT.—(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in—

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program units.

(e) DUAL STATUS REQUIREMENT.—(1) Funds appropriated for the Department of Defense may not (except as provided in paragraph (2)) be used for compensation as a military technician of any individual hired as a military technician (dual status) after February 10, 1996, who is no longer a member of the Selected Reserve.

(2) Except as otherwise provided by law, the Secretary concerned may pay compensation described in paragraph (1) to an individual described in that paragraph who is no longer a member of the Selected Reserve for a period up to 12 months following the individual's loss of membership in the Selected Reserve if the Secretary determines that such loss of membership was not due to the failure of that individual to meet military standards.

(f) DEFERRAL OF MANDATORY SEPARATION.—The Secretary of the Army shall implement personnel policies so as to allow a military technician (dual status) who continues to meet the requirements of this section for dual status to continue to serve beyond a mandatory removal date for officers, and any applicable maximum years of service limitation, until the military technician (dual status) reaches age 60 and attains eligibility for an unreduced annuity (as defined in section 10218(c) of this title).

(Added Pub. L. 104–106, div. A, title V, § 513(c)(1), Feb. 10, 1996, 110 Stat. 306; amended Pub. L. 104–201, div. A, title IV, § 413(b), (c), title XII, § 1214, Sept. 23, 1996, 110 Stat. 2507, 2508, 2695; Pub. L. 105–85, div. A, title V, § 522(a), (b), (f)–(h)(1), Nov. 18, 1997, 111 Stat. 1734–1736; Pub. L. 106–65, div. A, title V, § 521, Oct. 5, 1999, 113 Stat. 595; Pub. L. 108–136, div. A, title IV, § 403(c), Nov. 24, 2003, 117 Stat. 1452; Pub. L. 109–163, div. A, title V, § 513(a), Jan. 6, 2006, 119 Stat. 3232; Pub. L. 109–364, div. A, title V, § 525(b), Oct. 17, 2006, 120 Stat. 2194.)

REFERENCES IN TEXT

Section 115(c) of this title, referred to in subsecs. (b)(1) and (c)(1), (2)(A), was redesignated section 115(d) of this title by Pub. L. 108–375, div. A, title IV, § 416(a)(3), Oct. 28, 2004, 118 Stat. 1866.

AMENDMENTS

2006—Subsec. (a)(1)(C). Pub. L. 109–364, § 525(b)(1), substituted ''organizing, administering, instructing, or'' for ''administration and''.

Subsec. (a)(3). Pub. L. 109–364, § 525(b)(2), added par. (3).

Subsec. (f). Pub. L. 109–163 added subsec. (f).

2003—Subsecs. (b)(1), (c)(1), (2)(A). Pub. L. 108–136 substituted ''section 115(c)'' for ''115(g)''.

1999—Subsec. (a)(1)(A). Pub. L. 106–65, § 521(a)(1), substituted ''section 709(b)'' for ''section 709''.

Subsec. (a)(1)(C). Pub. L. 106–65, § 521(a)(2), inserted ''civilian'' after ''is assigned to a''.

Subsec. (e)(1). Pub. L. 106–65, § 521(b)(1), inserted ''(dual status)'' after ''military technician'' the second place it appeared.

Subsec. (e)(2). Pub. L. 106–65, § 521(b)(2), substituted ''Except as otherwise provided by law, the Secretary'' for ''The Secretary'' and ''up to 12 months'' for ''not to exceed six months''.

1997—Pub. L. 105–85, § 522(h), inserted ''(dual status)'' after ''military technicians'' in section catchline.

Subsec. (a). Pub. L. 105–85, § 522(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) IN GENERAL.—Military technicians are Federal civilian employees hired under title 5 and title 32 who are required to maintain dual-status as drilling reserve component members as a condition of their Federal civilian employment. Such employees shall be authorized and accounted for as a separate category of dual-status civilian employees, exempt as specified in subsection (b)(3) from any general or regulatory requirement for adjustments in Department of Defense civilian personnel.''

Subsec. (b). Pub. L. 105–85, § 522(g)(1), inserted ''(DUAL STATUS)'' after ''MILITARY TECHNICIANS'' in heading.

Subsec. (b)(1). Pub. L. 105–85, § 522(g)(2)(A), (B), in introductory provisions, inserted ''(dual status)'' after ''for military technicians'' and substituted ''military technicians (dual status)'' for ''dual status military technicians''.

Subsec. (b)(1)(C). Pub. L. 105–85, § 522(g)(2)(C), inserted ''(dual status)'' after ''military technicians''.

Subsec. (b)(2). Pub. L. 105–85, § 522(g)(3), inserted ''(dual status)'' after ''military technicians'' in two places.

Subsec. (b)(3). Pub. L. 105–85, § 522(g)(4), inserted ''(dual status)'' after ''Military technician''.

Subsec. (c). Pub. L. 105–85, § 522(g)(5)(A), inserted ''(dual status)'' after ''military technicians'' in introductory provisions.

Subsec. (c)(1)(A) to (D). Pub. L. 105–85, § 522(f), (g)(5)(B), substituted ''subsection (b)(1)'' for ''subsection (a)(1)'' and ''military technicians (dual status)'' for ''dual-status technicians''.

Subsec. (c)(2)(A). Pub. L. 105–85, § 522(g)(5)(C), inserted ''(dual status)'' after ''military technician''.

Subsec. (c)(2)(B). Pub. L. 105–85, § 522(g)(5)(D), substituted ''delineate the specific force structure reductions'' for ''delineate—

''(i) in the case of a reduction that includes a reduction in technicians described in subparagraph (A) or (C) of paragraph (1), the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those force structure reductions); and

''(ii) in the case of a reduction that includes reductions in technicians described in subparagraphs (B) or (D) of paragraph (1), the specific force structure reductions, Department of Defense civilian personnel reductions, or other reasons''.

Subsecs. (d), (e). Pub. L. 105–85, § 522(b), added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows:

''(d) DUAL-STATUS REQUIREMENT.—The Secretary of Defense shall require the Secretary of the Army and the Secretary of the Air Force to establish as a condition of employment for each individual who is hired after February 10, 1996, as a military technician that the individual maintain membership in the Selected Reserve (so as to be a so-called 'dual-status' technician) and shall require that the civilian and military position skill requirements of dual-status military technicians be compatible. No Department of Defense funds may be spent for compensation for any military technician hired after February 10, 1996, who is not a member of the Selected Reserve, except that compensation may be paid for up to six months following loss of membership in the Selected Reserve if such loss of membership was not due to the failure to meet military standards.''

1996—Subsec. (a). Pub. L. 104–201, § 1214(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (a)(1). Pub. L. 104–201, § 413(c)(1), substituted ''section 115(g)'' for ''section 115'' in introductory provisions.

Subsec. (b). Pub. L. 104–201, § 1214(1), (3), redesignated subsec. (a) as (b) and struck out ''in high-priority units and organizations specified in paragraph (1)'' after ''authorizations and personnel'' in par. (3). Former subsec. (b) redesignated (c).

Pub. L. 104–201, § 413(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–201, § 1214(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 104–201, § 413(b)(1), (c)(2), redesignated subsec. (b) as (c) and substituted ''after February 10, 1996,'' for ''after the date of the enactment of this section'' in two places.

Subsec. (d). Pub. L. 104–201, § 1214(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 513(b), Jan. 6, 2006, 119 Stat. 3232, provided that: ''The Secretary of the Army shall implement subsection (f) of section 10216 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 [Jan. 6, 2006].''

§ 10217. Non-dual status technicians

(a) DEFINITION.—For the purposes of this section and any other provision of law, a non-dual status technician is a civilian employee of the Department of Defense serving in a military technician position who—

(1) was hired as a technician before November 18, 1997, under any of the authorities specified in subsection (b) and as of that date is not a member of the Selected Reserve or after such date has ceased to be a member of the Selected Reserve; or

(2) is employed under section 709 of title 32 in a position designated under subsection (c) of that section and when hired was not required to maintain membership in the Selected Reserve.

(b) EMPLOYMENT AUTHORITIES.—The authorities referred to in subsection (a) are the following:

(1) Section 10216 of this title.

(2) Section 709 of title 32.

(3) The requirements referred to in section 8401 of title 5.

(4) Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104–61; 109 Stat. 654), and any comparable provision of law enacted on an annual basis in the Department of Defense Appropriations Acts for fiscal years 1984 through 1995.

(5) Any memorandum of agreement between the Department of Defense and the Office of Personnel Management providing for the hiring of military technicians.

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) Effective October 1, 2007, the total number of non-dual status technicians employed by the Army Reserve may not exceed 595 and by the Air Force Reserve may not exceed 90. If at any time after the preceding sentence takes effect the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(2) The total number of non-dual status technicians employed by the National Guard may not exceed 1,950. If at any time the number of non-dual status technicians employed by the National Guard exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(Added Pub. L. 105–85, div. A, title V, § 523(a)(1), Nov. 18, 1997, 111 Stat. 1736; amended Pub. L. 106–65, div. A, title V, § 523, Oct. 5, 1999, 113 Stat. 598; Pub. L. 106–398, § 1 [[div. A], title IV, § 414(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94; Pub. L. 107–314, div. A, title IV, § 414(d), Dec. 2, 2002, 116 Stat. 2527; Pub. L. 108–136, div. A, title IV, § 415, Nov. 24, 2003, 117 Stat. 1453.)

REFERENCES IN TEXT

Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104–61; 109 Stat. 654), referred to in subsec. (b)(4), was set out as a note under section 10101 of this title prior to repeal by Pub. L. 105–85, div. A, title V, § 522(e), Nov. 18, 1997, 111 Stat. 1735.

AMENDMENTS

2003—Subsec. (c)(1). Pub. L. 108–136 substituted ''may not exceed 595 and by the Air Force Reserve may not exceed 90'' for ''and Air Force Reserve may not exceed 175''.

2002—Subsec. (c)(2). Pub. L. 107–314 substituted ''The total number'' for ''Effective October 1, 2002, the total number'' in first sentence and struck out ''after the preceding sentence takes effect'' after ''If at any time'' in second sentence.

2000—Subsec. (c)(2). Pub. L. 106–398 substituted ''October 1, 2002'' for ''October 1, 2001''.

1999—Pub. L. 106–65, § 523(b), struck out ''military'' after ''status'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 523(a)(1)(A), struck out ''military'' after ''non-dual status'' in introductory provisions.

Subsec. (a)(1), (2). Pub. L. 106–65, § 523(a)(1)(B), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) was hired as a military technician before the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 under any of the authorities specified in subsection (c); and

''(2) as of the date of the enactment of that Act is not a member of the Selected Reserve or after such date ceased to be a member of the Selected Reserve.''

Subsec. (c). Pub. L. 106–65, § 523(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 525, Oct. 5, 1999, 113 Stat. 600, provided that: ''The amendments made by sections 523 and 524 [amending this section and section 709 of Title 32, National Guard] shall take effect 180 days after the date of the receipt by Congress of the plan required by section 523(d) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1737) [set out below] [plan received by Congress from Under Secretary of Defense, Personnel and Readiness, see Cong. Rec., vol. 145, p. H8464, Daily Issue, Ex. Comm. 4276, Sept. 21, 1999] or a report by the Secretary of Defense providing an alternative proposal to the plan required by that section.''

PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS)

Section 523(d), (e) of Pub. L. 105–85 provided that:

''(d) PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS).—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a plan for ensuring that, on and after September 30, 2007, all military technician positions are held only by military technicians (dual status).

''(2) The plan shall provide for achieving, by September 30, 2002, a 50 percent reduction, by conversion of positions or otherwise, in the number of non-dual status military technicians that are holding military technicians positions, as compared with the number of non-dual status technicians that held military technician positions as of September 30, 1997, as specified in the report under subsection (c) [111 Stat. 1737].

''(3) Among the alternative actions to be considered in developing the plan, the Secretary shall consider the feasibility and cost of each of the following:

''(A) Eliminating or consolidating technician functions and positions.

''(B) Contracting with private sector sources for the performance of functions performed by military technicians.

''(C) Converting non-dual status military technician positions to military technician (dual status) positions or to positions in the competitive service or, in the case of positions of the Army National Guard of the United States or the Air National Guard of the United States, to positions of State employment.

''(D) Use of incentives to facilitate attainment of the objectives specified for the plan in paragraphs (1) and (2).

''(4) The Secretary shall submit with the plan any recommendations for legislation that the Secretary considers necessary to carry out the plan.

''(e) DEFINITIONS FOR CATEGORIES OF MILITARY TECHNICIANS.—In this section [enacting this section]:

''(1) The term 'non-dual status military technician' has the meaning given that term in section 10217 of title 10, United States Code, as added by subsection (a).

''(2) The term 'military technician (dual status)' has the meaning given the term in section 10216(a) of such title.''

§ 10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws

(a) SEPARATION AND RETIREMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) An individual employed by the Army Reserve or the Air Force Reserve as a military technician (dual status) who after October 5, 1999, loses dual status is subject to paragraph (2) or (3), as the case may be.

(2) If a technician described in paragraph (1) is eligible at the time dual status is lost for an unreduced annuity and is age 60 or older at that time, the technician shall be separated not later than 30 days after the date on which dual status is lost.

(3)(A) If a technician described in paragraph (1) is not eligible at the time dual status is lost for an unreduced annuity or is under age 60 at that time, the technician shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

(I) in the case of a technician first hired as a military technician (dual status) on or before February 10, 1996, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and

(II) in the case of a technician first hired as a military technician (dual status) after February 10, 1996, not later than one year after the date on which dual status is lost.

(4) For purposes of this subsection, a military technician is considered to lose dual status upon—

(A) being separated from the Selected Reserve; or

(B) ceasing to hold the military grade specified by the Secretary concerned for the position held by the technician.

(b) NON-DUAL STATUS TECHNICIANS.—(1) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is eligible for an unreduced annuity and is age 60 or older shall be separated not later than April 5, 2000.

(2)(A) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is not eligible for an unreduced annuity or is under age 60 shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

(I) in the case of a technician first hired as a technician on or before February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than 30 days

after becoming eligible for an unreduced annuity and becoming 60 years of age; and

(II) in the case of a technician first hired as a technician after February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than one year after the date on which dual status is lost.

(3) An individual employed by the Army Reserve or the Air Force Reserve as a non-dual status technician who is ineligible for appointment to a military technician (dual status) position, or who decides not to apply for appointment to such a position, or who, during the period beginning on October 5, 1999, and ending on April 5, 2000, is not appointed to such a position, shall for reduction-in-force purposes be in a separate competitive category from employees who are military technicians (dual status).

(c) UNREDUCED ANNUITY DEFINED.—For purposes of this section, a technician shall be considered to be eligible for an unreduced annuity if the technician is eligible for an annuity under section 8336, 8412, or 8414 of title 5 that is not subject to a reduction by reason of the age or years of service of the technician.

(d) VOLUNTARY PERSONNEL ACTION DEFINED.—In this section, the term ''voluntary personnel action'', with respect to a non-dual status technician, means any of the following:

(1) The hiring, entry, appointment, reassignment, promotion, or transfer of the technician into a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(2) Promotion to a higher grade if the technician is in a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(Added Pub. L. 106–65, div. A, title V, § 522(a)(1), Oct. 5, 1999, 113 Stat. 595; amended Pub. L. 106–398, § 1 [[div. A], title V, § 525(a), title X, § 1087(a)(20)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, 1654A–291.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section''.

Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(1)(A)], inserted ''and is age 60 or older at that time'' after ''unreduced annuity''.

Subsec. (a)(3)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(1)(B)], inserted ''or is under age 60 at that time'' after ''unreduced annuity'' in introductory provisions.

Subsec. (a)(3)(B)(i). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(B)], substituted ''October 5, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this subsection''.

Subsec. (a)(3)(B)(ii)(I). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(1)(C)], inserted ''and becoming 60 years of age'' after ''unreduced annuity''.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A), (C)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section'' and ''April 5, 2000'' for ''six months after the date of the enactment of this section''.

Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(2)(A)], inserted ''and is age 60 or older'' after ''unreduced annuity''.

Subsec. (b)(2)(A). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section'' in introductory provisions.

Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(2)(B)], inserted ''or is under age 60'' after ''unreduced annuity'' in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(B)], substituted ''October 5, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this subsection''.

Subsec. (b)(2)(B)(ii). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section'' in subcls. (I) and (II).

Subsec. (b)(2)(B)(ii)(I). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(2)(C)], inserted ''and becoming 60 years of age'' after ''unreduced annuity''.

Subsec. (b)(3). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(D)], substituted ''during the period beginning on October 5, 1999, and ending on April 5, 2000,'' for ''within six months of the date of the enactment of this section''.

TRANSITION PROVISION

Pub. L. 106–398, § 1 [[div. A], title V, § 525(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–109, as amended by Pub. L. 107–107, div. A, title X, § 1048(f)(1), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(1) An individual who before the date of the enactment of this Act [Oct. 30, 2000] was involuntarily separated or retired from employment as an Army Reserve or Air Force Reserve technician under section 10218 of title 10, United States Code, and who would not have been so separated if the provisions of subsections (a) and (b) of that section, as amended by subsection (a), had been in effect at the time of such separation may, with the approval of the Secretary concerned, be reinstated to the technician status held by that individual immediately before that separation. The effective date of any such reinstatement is the date the employee resumes technician status.

''(2) The authority under paragraph (1) applies only to reinstatement for which an application is received by the Secretary concerned before the end of the one-year period beginning on the date of the enactment of this Act [Oct. 30, 2000].''

TEMPORARY PROVISION FOR EXTENSION OF TIME FOR SEPARATION OR RETIREMENT

Pub. L. 106–65, div. A, title V, § 522(a)(3), Oct. 5, 1999, 113 Stat. 597, provided that: ''During the six-month period beginning on the date of the enactment of this Act [Oct. 5, 1999], the provisions of subsections (a)(3)(B)(ii)(I) and (b)(2)(B)(ii)(I) of section 10218 of title 10, United States Code, as added by paragraph (1), shall be applied by substituting 'six months' for '30 days'.''

CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES

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

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 515(b)(4)(G), Jan. 6, 2006, 119 Stat. 3235, substituted ''Navy Reserve'' for ''Naval Reserve'' in item 10303.

§ 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 Navy 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 Homeland Security 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title V, § 515(b)(1)(CC), Jan. 6, 2006, 119 Stat. 3233.)

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).

AMENDMENTS

2006—Subsec. (a)(7). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

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

EFFECTIVE DATE OF 2002 AMENDMENT

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

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.

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

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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; July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647; 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(b)	10:38 (last 37 words of 1st par.).	
3033(c)	10:38 (1st sentence, less proviso of 2d par.).	
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.

§ 10303. Navy Reserve Policy Board

A Navy 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 Navy Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(DD), (3)(H), Jan. 6, 2006, 119 Stat. 3233, 3234.)

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).

AMENDMENTS

2006—Pub. L. 109–163, § 515(b)(3)(H), substituted ''Navy Reserve'' for ''Naval Reserve'' in section catchline.

Pub. L. 109–163, § 515(b)(1)(DD), substituted ''Navy Reserve'' for ''Naval Reserve'' in two places in text.

§ 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).

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

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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, July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647; 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.
8033(b)	10:38 (last 37 words of 1st par.).	
8033(c)	10:38 (1st sentence, less proviso, of 2d par.).	
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.

CHAPTER 1011—NATIONAL GUARD BUREAU

Sec.
10501. National Guard Bureau.
10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession.
10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force.
10504. Chief of National Guard Bureau: annual report.
10505. Director of the Joint Staff 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. Repealed.]

AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, §§ 507(b)(2), 508(c)(2), Oct. 28, 2004, 118 Stat. 1876, 1877, inserted ''; succession'' after ''grade'' in item 10502 and substituted ''Director of the Joint Staff'' for ''Vice Chief'' in item 10505.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(5), (7)(B), Feb. 10, 1996, 110 Stat. 496, inserted ''Sec.'' at top of column of section numbers and struck out item 10508 ''Definition''.

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.)

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, as amended by Pub. L. 104–106, div. A, title XV, § 1504(a)(6), Feb. 10, 1996, 110 Stat. 513, 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 (b) [repealing 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].''

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

(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.

(e) SUCCESSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, the senior of the two officers specified in paragraph (2) shall serve as the acting Chief of the National Guard Bureau during any period that—

(A) there is a vacancy in the position of Chief of the National Guard Bureau; or

(B) the Chief is unable to perform the duties of that office.

(2) The officers specified in this paragraph are the following:

(A) The senior officer of the Army National Guard of the United States on duty with the National Guard Bureau.

(B) The senior officer of the Air National Guard of the United States on duty with the National Guard Bureau.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2824; amended Pub. L. 108–375, div. A, title V, § 507(a), (b)(1), Oct. 28, 2004, 118 Stat. 1876.)

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).

AMENDMENTS

2004—Pub. L. 108–375, § 507(b)(1), inserted ''; succession'' after ''grade'' in section catchline.

Subsec. (e). Pub. L. 108–375, § 507(a), added subsec. (e).

§ 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.)

ANNUAL PREPARATION OF FUTURE YEARS DEFENSE PLAN

Pub. L. 104–196, § 123, Sept. 16, 1996, 110 Stat. 2392, provided that: ''The National Guard Bureau shall annually prepare a future years defense plan based on the requirement and priorities of the National Guard: *Provided*, That this plan shall be presented to the committees of Congress concurrent with the President's budget submission for each fiscal year.''

§ 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. Director of the Joint Staff of the National Guard Bureau

(a) APPOINTMENT.—(1) There is a Director of the Joint Staff 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 of the National Guard Bureau and the Director of the Joint Staff 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 Director of the Joint Staff 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 Director of the Joint Staff 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 Director.

(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 of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau.

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

(c) GRADE.—The Director of the Joint Staff of the National Guard Bureau shall be appointed to serve in the grade of major general.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2826; amended Pub. L. 108–375, div. A, title V, §§ 507(c), 508(a)–(b)(3), (c)(1), Oct. 28, 2004, 118 Stat. 1876, 1877.)

AMENDMENTS

2004—Pub. L. 108–375, § 508(c)(1), substituted ''Director of the Joint Staff'' for ''Vice Chief'' in section catchline.

Subsec. (a)(1). Pub. L. 108–375, § 508(a), substituted ''Director of the Joint Staff'' for ''Vice Chief'' in introductory provisions.

Subsec. (a)(2). Pub. L. 108–375, § 508(b)(3), substituted ''Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau'' for ''Chief and Vice Chief of the National Guard Bureau''.

Subsec. (a)(3)(A). Pub. L. 108–375, § 508(b)(1), substituted ''Director of the Joint Staff'' for ''Vice Chief''.

Subsec. (a)(3)(B). Pub. L. 108–375, § 508(b)(1), (2), substituted ''Director of the Joint Staff'' for ''Vice Chief'' and ''as the Director'' for ''as the Vice Chief''.

Subsec. (a)(4). Pub. L. 108–375, § 508(b)(3), substituted ''Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau'' for ''Chief and Vice Chief of the National Guard Bureau''.

Subsecs. (b), (c). Pub. L. 108–375, § 508(b)(1), substituted ''Director of the Joint Staff'' for ''Vice Chief''.

Subsecs. (d), (e). Pub. L. 108–375, § 507(c), struck out subsecs. (d) and (e) which related to functions as acting Chief and succession after Chief and Vice Chief, respectively.

CHANGE OF NAME

Pub. L. 108–375, div. A, title V, § 508(d), Oct. 28, 2004, 118 Stat. 1877, provided that: ''Any reference in any law, regulation, document, paper, or other record of the United States to the Vice Chief of the National Guard Bureau shall be deemed to be a reference to the Director of the Joint Staff of the National Guard Bureau.''

§ 10506. Other senior National Guard Bureau officers

(a) ADDITIONAL GENERAL OFFICERS.—(1) In addition to the Chief of the National Guard Bureau and the Director of the Joint Staff 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 shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall 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 shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall 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.

(3)(A) The President, by and with the advice and consent of the Senate, shall appoint the Director, Army National Guard, from general officers of the Army National Guard of the United States and shall appoint the Director, Air National Guard, from general officers of the Air National Guard of the United States.

(B) The Secretary of Defense may not recommend an officer to the President for appointment as Director, Army National Guard, or as Director, Air National Guard, unless the officer—

(i) is recommended by the Secretary of the military department concerned; and

(ii) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(C) An officer on active duty for service as the Director, Army National Guard, or the Director, Air National Guard, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(D) Until December 31, 2006, the Secretary of Defense may waive clause (ii) of subparagraph (B) with respect to the appointment of an officer as Director, Army National Guard, or as Director, Air National Guard, if the Secretary of the military department concerned requests the waiver and, in the judgment of the Secretary of Defense—

(i) the officer is qualified for service in the position; and

(ii) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(E) The Director, Army National Guard, and the Director, Air National Guard, are appointed for a period of four years, but may be removed for cause at any time. An officer serving as either Director may be reappointed for one additional four-year period.

(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; amended Pub. L. 106–65, div. A, title V, § 554(f), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, § 1 [[div. A], title V, § 507(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105; Pub. L. 107–314, div. A, title V, § 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108–375, div. A, title V, §§ 508(b)(4), 536(a), Oct. 28, 2004, 118 Stat. 1877, 1901.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–375, § 508(b)(4), substituted ''Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau'' for ''Chief and Vice Chief of the National Guard Bureau'' in introductory provisions.

Subsec. (a)(3)(D). Pub. L. 108–375, § 536(a), substituted ''December 31, 2006'' for ''December 31, 2004''.

2002—Subsec. (a)(3)(D). Pub. L. 107–314 substituted ''December 31, 2004'' for ''October 1, 2003''.

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 507(e)(1)], substituted ''shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall'' for ''while so serving shall hold the grade of major general or, if appointed to that position in accordance with section 12505(a)(2) of this title, the grade of lieutenant general, and'' in subpars. (A) and (B).

Subsec. (a)(3). Pub. L. 106–398, § 1 [[div. A], title V, § 507(e)(2)], added par. (3).

1999—Subsec. (a)(1)(A), (B). Pub. L. 106–65 inserted ''or, if appointed to that position in accordance with section 12505(a)(2) of this title, the grade of lieutenant general,'' after ''major general''.

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Amendment by Pub. L. 106–65 effective 60 days after Oct. 5, 1999, with special provision for an officer who is

a covered position incumbent who is appointed under that amendment to the grade of lieutenant general or vice admiral, see section 554(g), (h) of Pub. L. 106–65, set out as a note under section 3038 of this title.

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

Except as provided in section 12402(b) 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 Force as he considers necessary.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(c)(1)(A), Oct. 5, 1994, 108 Stat. 2982; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(6), Feb. 10, 1996, 110 Stat. 496.)

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).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''12402(b)'' for ''124402(b)'' and ''Air Force'' for ''Air Forces''.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE

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. Repealed. Pub. L. 104–106, div. A, title XV, § 1501(b)(7)(A), Feb. 10, 1996, 110 Stat. 496]

Section, added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2827, defined ''State'' for purposes of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 113 of this title.

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

Sec.
10541. National Guard and reserve component equipment: annual report to Congress.
10542. Army National Guard combat readiness: annual report.
10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program.

AMENDMENTS

1996—Pub. L. 104–201, title XII, § 1257(a)(2), Sept. 23, 1996, 110 Stat. 2699, added item 10543.

§ 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.

(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 ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, 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 ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, 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 ANGCRRA 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 ANGCRRA, shown separately for each of the three categories of officers set forth in section 1113(b) of ANGCRRA.

(7) The number of waivers during the preceding fiscal year under section 1114(a) of ANGCRRA 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 ANGCRRA 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 ANGCRRA 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 ANGCRRA of the requirement in section 1115(c)(1) of ANGCRRA 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 ANGCRRA 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 ANGCRRA.

(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 ANGCRRA.

(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 ANGCRRA.

(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 ANGCRRA.

(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 ANGCRRA.

(17) A description of the measures taken during the preceding fiscal year to comply with the requirement in section 1120 of ANGCRRA 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 ANGCRRA, 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 ANGCRRA, 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 ANGCRRA; 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 ANGCRRA.

(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. 12001 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.

(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; Pub. L. 104–106, div. A, title XV, § 1501(b)(8), Feb. 10, 1996, 110 Stat. 496; Pub. L. 104–201, div. A, title X, § 1074(a)(21), Sept. 23, 1996, 110 Stat. 2660.)

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.

AMENDMENTS

1996—Subsec. (b)(21). Pub. L. 104–201 substituted "10 U.S.C. 12001 note" for "10 U.S.C. 261 note".

Subsec. (d). Pub. L. 104–106 struck out subsec. (d) which read as follows: "DEFINITION.—In this section, the term 'State' includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands."

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 ANGCRRA to which that paragraph pertains has taken effect. Be-

fore 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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective 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.

§ 10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program

(a) IN GENERAL.—The Secretary of Defense shall specify in each future-years defense program submitted to Congress under section 221 of this title the estimated expenditures and the proposed appropriations, for each fiscal year of the period covered by that program, for the procurement of equipment and for military construction for each of the reserve components of the armed forces.

(b) ASSOCIATED ANNEXES.—The associated annexes of the future-years defense program shall specify, at the same level of detail as is set forth in the annexes for the active components, the amount requested for—

(1) procurement of each item of equipment to be procured for each reserve component; and

(2) each military construction project to be carried out for each reserve component, together with the location of the project.

(c) REPORT.—(1) If the aggregate of the amounts specified in paragraphs (1) and (2) of subsection (b) for a fiscal year is less than the amount equal to 90 percent of the average authorized amount applicable for that fiscal year under paragraph (2), the Secretary of Defense shall submit to Congress a report specifying for each reserve component the additional items of equipment that would be procured, and the additional military construction projects that would be carried out, if that aggregate amount were an amount equal to such average authorized amount. The report shall be at the same level of detail as is required by subsection (b).

(2) In this subsection, the term ''average authorized amount'', with respect to a fiscal year, means the average of—

(A) the aggregate of the amounts authorized to be appropriated for the preceding fiscal year for the procurement of items of equipment, and for military construction, for the reserve components; and

(B) the aggregate of the amounts authorized to be appropriated for the fiscal year preceding the fiscal year referred to in subparagraph (A) for the procurement of items of equipment, and for military construction, for the reserve components.

(3) A report required under paragraph (1) for a fiscal year shall be submitted not later than 15 days after the date on which the President submits to Congress the budget for such fiscal year under section 1105(a) of title 31.

(Added Pub. L. 104–201, div. A, title XII, § 1257(a)(1), Sept. 23, 1996, 110 Stat. 2699; amended Pub. L. 105–85, div. A, title X, § 1009(a), Nov. 18, 1997, 111 Stat. 1872; Pub. L. 106–398, § 1 [[div. A], title IX, § 931], Oct. 30, 2000, 114 Stat. 1654, 1654A–237.)

AMENDMENTS

2000—Subsec. (c)(3). Pub. L. 106–398 added par. (3).

1997—Pub. L. 105–85 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE

Section 1257(b) of Pub. L. 104–201 provided that: ''Section 10543 of title 10, United States Code, as added by subsection (a), shall apply with respect to each future-years defense program submitted to Congress after the date of the enactment of this Act [Sept. 23, 1996].''

REQUIRED LEVEL OF DETAIL

Section 1009(b) of Pub. L. 105–85 provided that: ''The level of detail provided for procurement and military construction in the future-years defense programs for fiscal years after fiscal year 1998 may not be less than the level of detail provided for procurement and military construction in the future-years defense program for fiscal year 1998.''

PART II—PERSONNEL GENERALLY

Chap.		Sec.
1201.	Authorized Strengths and Distribution in Grade	12001
1203.	Enlisted Members	12101
1205.	Appointment of Reserve Officers	12201
1207.	Warrant Officers	12241
1209.	Active Duty	12301
1211.	National Guard Members in Federal Service	12401
1213.	Special Appointments, Assignments, Details, and Duties	12501
1214.	Ready Reserve Mobilization Income Insurance	12521
1215.	Miscellaneous Prohibitions and Penalties	12551
1217.	Miscellaneous Rights and Benefits	12601
1219.	Standards and Procedures for Retention and Promotion	12641
1221.	Separation	12681
1223.	Retired Pay for Non-Regular Service	12731
1225.	Retired Grade	12771

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, § 515(b), Nov. 18, 1997, 111 Stat. 1733, substituted ''12551'' for ''[No present sections]'' in item for chapter 1215.

1996—Pub. L. 104–106, div. A, title V, § 512(a)(2), Feb. 10, 1996, 110 Stat. 305, added item for chapter 1214.

CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE

Sec.

12001. Authorized strengths: reserve components.

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

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

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

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

Sec.
12006. Strength limitations: authority to waive in time of war or national emergency.
12007. Reserve officers of the Army: distribution.
12008. Army Reserve and Air Force Reserve: warrant officers.
12009. Army and Air Force reserve components: temporary increases.
12010. Computations for Navy Reserve and Marine Corps Reserve: rule when fraction occurs in final result.
12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard.
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.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 515(b)(4)(H), Jan. 6, 2006, 119 Stat. 3235, substituted ''Navy Reserve'' for ''Naval Reserve'' in item 12010.

1999—Pub. L. 106–65, div. A, title X, § 1066(a)(31), Oct. 5, 1999, 113 Stat. 772, inserted ''in an'' after ''officers'' in item 12003.

§ 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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

Pub. L. 109–163, div. A, title IV, §§ 411, 412, Jan. 6, 2006, 119 Stat. 3220, 3221, which authorized end strengths for Selected Reserve personnel of the reserve components and for Reserves on active duty in support of the Reserves as of the last day of a fiscal year was from the National Defense Authorization Act for Fiscal Year 2006 and was repeated in provisions of subsequent authorization acts which are not set out in the Code. Similar provisions were contained in the following prior authorization acts:

Pub. L. 108–375, div. A, title IV, §§ 411, 412, Oct. 28, 2004, 118 Stat. 1864, 1865.

Pub. L. 108–136, div. A, title IV, §§ 411, 412, Nov. 24, 2003, 117 Stat. 1452, 1453.

Pub. L. 107–314, div. A, title IV, §§ 411, 412, Dec. 2, 2002, 116 Stat. 2526, 2527.

Pub. L. 107–107, div. A, title IV, §§ 411, 412, Dec. 28, 2001, 115 Stat. 1069, 1070.

Pub. L. 106–398, § 1 [[div. A], title IV, §§ 411, 412], Oct. 30, 2000, 114 Stat. 1654, 1654A–93.

Pub. L. 106–65, div. A, title IV, §§ 411, 412, Oct. 5, 1999, 113 Stat. 585, 586.

Pub. L. 105–261, div. A, title IV, §§ 411, 412, Oct. 17, 1998, 112 Stat. 1997.

Pub. L. 105–85, div. A, title IV, §§ 411, 412, Nov. 18, 1997, 111 Stat. 1719, 1720.

Pub. L. 104–201, div. A, title IV, §§ 411, 412, Sept. 23, 1996, 110 Stat. 2506, 2507.

Pub. L. 104–106, div. A, title IV, §§ 411, 412, Feb. 10, 1996, 110 Stat. 287, 288.

Pub. L. 103–337, div. A, title IV, §§ 411, 412, Oct. 5, 1994, 108 Stat. 2746.

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, prohibited Secretary of Defense from reducing number of medical personnel in any reserve component below number of such personnel in that component on Sept. 30, 1992, unless Secretary certified to Congress that number of such personnel to be reduced in particular military department was excess to current and projected needs for personnel in Selected Reserve of that department, and required that assessment of such needs be consistent with wartime requirements for Selected Reserve personnel identified in final report on comprehensive study of military medical care system prepared pursuant to section 733 of Pub. L. 102–190, formerly set out as a note under section 1071 of this title, prior to repeal by Pub. L. 104–106, div. A, title V, §564(d)(3), Feb. 10, 1996, 110 Stat. 327.

PROGRAM FOR ACTIVE COMPONENT SUPPORT OF RESERVES

Pub. L. 108–375, div. A, title V, §515(b)–(d), Oct. 28, 2004, 118 Stat. 1883, 1884, prohibited the Secretary of the Army from reducing the number of active component Reserve support personnel below the number of such personnel as of Oct. 28, 2004, until the Secretary of the Army submitted to the Committees on Armed Services of the Senate and House of Representatives, not later than Mar. 31, 2005, a report on the support by active components of the Army for training and readiness of the Army National Guard and Army Reserve.

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; Pub. L. 104–106, div. A, title IV, §413, Feb. 10, 1996, 110 Stat. 288; Pub. L. 104–201, div. A, title V, §545(b), Sept. 23, 1996, 110 Stat. 2524; Pub. L. 106–65, div. A, title X, §1066(d)(2), Oct. 5, 1999, 113 Stat. 773; Pub. L. 108–375, div. A, title V, §515(a), Oct. 28, 2004, 118 Stat. 1883, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of the Army shall carry out a 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.—(1) The Secretary shall assign not less than 3,500 active component personnel to serve as advisers under the program.

''(2) The Secretary of Defense may count toward the number of active component personnel required under paragraph (1) to be assigned to serve as advisers under the program under this section any active component personnel who are assigned to an active component unit (A) that was established principally for the purpose of providing dedicated training support to reserve component units, and (B) the primary mission of which is to provide such dedicated training support.

''(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 readi-

ness 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.''

§ 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).

§ 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), 40 are distributed among the line and the staff corps as follows:

Line	33
Medical Department staff corps	5
Chaplain Corps	1
Judge Advocate General's 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 six; 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.

(4)(A) For the purposes of paragraph (1), the Medical Department staff corps referred to in the table are as follows:

(i) The Medical Corps.

(ii) The Dental Corps.

(iii) The Nurse Corps.

(iv) The Medical Service Corps.

(B) Each of the Medical Department staff corps is authorized one rear admiral (lower half) within the strength authorization distributed to the Medical Department staff corps under paragraph (1). The Secretary of the Navy shall distribute the remainder of the strength authorization for the Medical Department staff corps under that paragraph among those staff corps as the Secretary determines appropriate to meet the needs of the Navy.

(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 Navy 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(9), Feb. 10, 1996, 110 Stat. 496; Pub. L. 105–261, div. A, title IV, § 415, Oct. 17, 1998, 112 Stat. 1998; Pub. L. 109–163, div. A, title V, §§ 512, 515(b)(1)(EE), Jan. 6, 2006, 119 Stat. 3232, 3233.)

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).

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–163, § 512(a), (b), (d), substituted ''40'' for ''39'' in introductory provisions and ''33'' for ''28'' and ''5'' for ''9'' in table.

Subsec. (c)(2)(A). Pub. L. 109–163, § 512(c), substituted ''six'' for ''seven''.

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

1998—Subsec. (c)(1). Pub. L. 105–261, § 415(1), in table, inserted item relating to Medical Department staff corps and struck out items relating to Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps.

Subsec. (c)(4). Pub. L. 105–261, § 415(2), added par. (4).

1996—Subsec. (a). Pub. L. 104–106 substituted ''active status, are'' for ''active-status, are''.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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

(3) Medical officers and dental officers shall not be counted for the purposes of this subsection.

(b)(1) The authorized strengths of the Navy 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	8 percent
Major	16 percent
Captain	39 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	35 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 Navy 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; amended Pub. L. 106–398, § 1 [[div. A], title IV, § 423], Oct. 30, 2000, 114 Stat. 1654, 1654A–96; Pub. L. 108–375, div. A, title V, § 504, Oct. 28, 2004, 118 Stat. 1875; Pub. L. 109–163, div. A, title V, § 515(b)(1)(FF), Jan. 6, 2006, 119 Stat. 3233.)

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).

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve'' in introductory provisions.

Subsec. (d)(2). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

2004—Subsec. (c)(1). Pub. L. 108–375 amended table generally, increasing percentages of authorized number of officers in grades other than colonel.

2000—Subsec. (a)(3). Pub. L. 106–398 added par. (3).

§ 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.

DELEGATION OF AUTHORITY

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

§ 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 organization 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 Navy 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(GG), (3)(I), Jan. 6, 2006, 119 Stat. 3233, 3234.)

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).

AMENDMENTS

2006—Pub. L. 109–163, § 515(b)(3)(I), substituted ''Navy Reserve'' for ''Naval Reserve'' in section catchline.

Pub. L. 109–163, § 515(b)(1)(GG), substituted ''Navy Reserve'' for ''Naval Reserve'' in text.

§ 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) LIMITATIONS.—(1) Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of officers of that reserve component who may be serving in the grade of:		
	Major	Lieutenant Colonel	Colonel
Army Reserve:			
10,000	1,390	740	230
11,000	1,529	803	242
12,000	1,668	864	252
13,000	1,804	924	262
14,000	1,940	984	272
15,000	2,075	1,044	282
16,000	2,210	1,104	291
17,000	2,345	1,164	300
18,000	2,479	1,223	309
19,000	2,613	1,282	318
20,000	2,747	1,341	327
21,000	2,877	1,400	336
Army National Guard:			
20,000	1,500	850	325
22,000	1,650	930	350
24,000	1,790	1,010	370
26,000	1,930	1,085	385
28,000	2,070	1,160	400
30,000	2,200	1,235	405
32,000	2,330	1,305	408
34,000	2,450	1,375	411
36,000	2,570	1,445	411
38,000	2,670	1,515	411
40,000	2,770	1,580	411
42,000	2,837	1,644	411
Marine Corps Reserve:			
1,100	106	56	20
1,200	110	60	21
1,300	114	63	22
1,400	118	66	23
1,500	121	69	24
1,600	124	72	25
1,700	127	75	26
1,800	130	78	27
1,900	133	81	28
2,000	136	84	29
2,100	139	87	30
2,200	141	90	31
2,300	143	92	32
2,400	145	94	33
2,500	147	96	34
2,600	149	98	35
Air Force Reserve:			
500	83	85	50
1,000	155	165	95
1,500	220	240	135
2,000	285	310	170
2,500	350	369	203
3,000	413	420	220
3,500	473	464	230
4,000	530	500	240
4,500	585	529	247
5,000	638	550	254
5,500	688	565	261
6,000	735	575	268
7,000	770	595	280
8,000	805	615	290
10,000	835	635	300
Air National Guard:			
5,000	333	335	251
6,000	403	394	260
7,000	472	453	269
8,000	539	512	278
9,000	606	571	287
10,000	673	630	296
11,000	740	688	305
12,000	807	742	314
13,000	873	795	323
14,000	939	848	332
15,000	1,005	898	341
16,000	1,067	948	350
17,000	1,126	998	359
18,000	1,185	1,048	368
19,000	1,235	1,098	377
20,000	1,283	1,148	380.

(2) Of the total number of members of the Navy Reserve who are serving on full-time re-

serve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of lieutenant commander, commander, and captain may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of Navy Reserve serving on full-time reserve component duty:	Number of officers who may be serving in the grade of:		
	Lieutenant commander	Commander	Captain
10,000	807	447	141
11,000	867	467	153
12,000	924	485	163
13,000	980	503	173
14,000	1,035	521	183
15,000	1,088	538	193
16,000	1,142	555	203
17,000	1,195	565	213
18,000	1,246	575	223
19,000	1,291	585	233
20,000	1,334	595	242
21,000	1,364	603	250
22,000	1,384	610	258
23,000	1,400	615	265
24,000	1,410	620	270.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on full-time reserve component duty is between any two consecutive numbers in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on full-time reserve component duty is more or less than the highest or lowest number, respectively, set forth in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADES.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve officers that may be on full-time reserve component duty for a reserve component in a grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for the grade in that table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term ''full-time reserve component duty'' means the following duty:

(1) Active duty described in sections 10211, 10302, 10303, 10304, 10305, 12310, or 12402 of this title.

(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32, except for duty under section 115(b)(1)(B) and (C) of this title and section 115(i)(9) of this title.

(3) Active duty described in section 708 of title 32.

(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; Pub. L. 104–106, div. A, title IV, § 414(a), Feb. 10, 1996, 110 Stat. 288; Pub. L. 105–261, div. A, title IV, § 414(a), Oct. 17, 1998, 112 Stat. 1998; Pub. L. 106–65, div. A, title IV, § 414(a), Oct. 5, 1999, 113 Stat. 586; Pub. L. 106–398, § 1 [[div. A], title IV, §§ 415(a), 421(b), 424(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94 to 1654A–96; Pub. L. 107–107, div. A, title IV, § 415(a), Dec. 28, 2001, 115 Stat. 1070; Pub. L. 108–375, div. A, title IV, § 416(h), Oct. 28, 2004, 118 Stat. 1869; Pub. L. 109–163, div. A, title V, § 515(b)(1)(HH), Jan. 6, 2006, 119 Stat. 3233.)

AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve'' in introductory provisions and table.

2004—Subsec. (e)(2). Pub. L. 108–375 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Full-time National Guard duty (other than for training) under section 502(f) of title 32.''

2001—Subsec. (a). Pub. L. 107–107 inserted heading and amended text of subsec. (a) generally. Prior to amendment, text consisted of table setting out maximum 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.

Subsec. (b). Pub. L. 107–107 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''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.''

Subsec. (c). Pub. L. 107–107 inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: ''Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any

provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.''

Subsec. (d). Pub. L. 107–107 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''Upon increasing under subsection (c)(2) of section 115 of this title the end strength that is authorized under subsection (a)(1)(B) of that section for a fiscal year for active-duty personnel and full-time National Guard duty personnel of an armed force who are to be paid from funds appropriated for reserve personnel, the Secretary of Defense may increase for that fiscal year the limitation that is set forth in subsection (a) of this section for the number of officers of that armed force serving in any grade if the Secretary determines that such action is in the national interest. The percent of the increase may not exceed the percent by which the Secretary increases that end strength.''

Subsec. (e). Pub. L. 107–107 added subsec. (e).

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title IV, § 415(a)], amended table generally, increasing the fiscal year limitation on number of reserve officers in the Army in grade of Major or Lieutenant Commander from 3,227 to 3,316, in grade of Lieutenant Colonel or Commander from 1,611 to 1,759, and in grade of Colonel or Navy Captain from 471 to 529, and in the Air Force in grade of Major or Lieutenant Commander from 860 to 948, in grade of Lieutenant Colonel or Commander from 777 to 852, and in grade of Colonel or Navy Captain from 297 to 317.

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title IV, § 421(b)], added subsec. (c).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title IV, § 424(a)], added subsec. (d).

1999—Subsec. (a). Pub. L. 106–65 amended table generally, increasing the fiscal year limitation on number of reserve officers in the Army in grade of Major or Lieutenant Commander from 3,219 to 3,227, in grade of Lieutenant Colonel or Commander from 1,524 to 1,611, and in grade of Colonel or Navy Captain from 438 to 471, and in the Air Force in grade of Major or Lieutenant Commander from 791 to 860 and in grade of Lieutenant Colonel or Commander from 713 to 777.

1998—Subsec. (a). Pub. L. 105–261, in table, increased fiscal year limitation on number of reserve officers in the Army in grade of Colonel or Navy Captain from 412 to 438 and in the Air Force in grade of Major or Lieutenant Commander from 643 to 791, in grade of Lieutenant Colonel or Commander from 672 to 713, and in grade of Colonel or Navy Captain from 274 to 297.

1996—Subsec. (a). Pub. L. 104–106, in table, increased fiscal year limitation on number of reserve officers in the Army in grade of Colonel or Navy Captain from 372 to 412, in the Air Force in grade of Major or Lieutenant Commander from 575 to 643 and in grade of Lieutenant Colonel or Commander from 636 to 672, and in the Marine Corps in grade of Major or Lieutenant Commander from 110 to 140, in grade of Lieutenant Colonel or Commander from 75 to 90, and in grade of Colonel or Navy Captain from 25 to 30. All other figures remained unchanged.

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 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IV, § 415(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94, provided that: ''The amendments made by this section [amending this section and section 12012 of this title] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, § 414(c), Oct. 17, 1998, 112 Stat. 1998, provided that: ''The amendments made by this section [amending this section and section 12012 of this title] shall take efffect [sic] on October 1, 1998.''

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.

§ 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

(a) LIMITATIONS.—Of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members in each of pay grades of E–8 and E–9 who may be serving on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E–8	E–9
Army Reserve:		
10,000	1,052	154
11,000	1,126	168
12,000	1,195	180
13,000	1,261	191
14,000	1,327	202
15,000	1,391	213
16,000	1,455	224
17,000	1,519	235
18,000	1,583	246
19,000	1,647	257
20,000	1,711	268
21,000	1,775	278
Army National Guard:		
20,000	1,650	550
22,000	1,775	615
24,000	1,900	645
26,000	1,945	675
28,000	1,945	705
30,000	1,945	725
32,000	1,945	730
34,000	1,945	735
36,000	1,945	738
38,000	1,945	741
40,000	1,945	743
42,000	1,945	743
Navy Reserve:		
10,000	340	143
11,000	364	156
12,000	386	169
13,000	407	182
14,000	423	195
15,000	435	208
16,000	447	221
17,000	459	234
18,000	471	247
19,000	483	260
20,000	495	273
21,000	507	286
22,000	519	299
23,000	531	312
24,000	540	325
Marine Corps Reserve:		
1,100	50	11
1,200	55	12
1,300	60	13
1,400	65	14
1,500	70	15
1,600	75	16
1,700	80	17
1,800	85	18
1,900	89	19
2,000	93	20
2,100	96	21
2,200	99	22
2,300	101	23
2,400	103	24
2,500	105	25
2,600	107	26
Air Force Reserve:		
500	75	40
1,000	145	75
1,500	208	105
2,000	270	130
2,500	325	150
3,000	375	170
3,500	420	190
4,000	460	210
4,500	495	230
5,000	530	250
5,500	565	270

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E–8	E–9
6,000	600	290
7,000	670	330
8,000	740	370
10,000	800	400
Air National Guard:		
5,000	1,020	405
6,000	1,070	435
7,000	1,120	465
8,000	1,170	490
9,000	1,220	510
10,000	1,270	530
11,000	1,320	550
12,000	1,370	570
13,000	1,420	589
14,000	1,470	608
15,000	1,520	626
16,000	1,570	644
17,000	1,620	661
18,000	1,670	678
19,000	1,720	695
20,000	1,770	712.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on full-time reserve component duty is between any two consecutive numbers in the first column of the table in subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on full-time reserve component duty is more or less than the highest or lowest number, respectively, set forth in the first column of the table in subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in the table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADE.—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 this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E–8.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve enlisted members that may be on active duty or full-time National Guard duty as described in subsection (a) for a reserve component in a pay grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for that grade and reserve component in the table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term ''full-time reserve component duty'' has the meaning given the term in section 12011(e) of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987; amended Pub. L. 104–106, div. A, title IV, § 414(b), title XV, § 1501(b)(10), Feb. 10, 1996, 110 Stat. 288, 496; Pub. L. 105–261, div. A, title IV, § 414(b), Oct. 17, 1998, 112 Stat. 1998; Pub. L. 106–65, div. A, title IV, § 414(b), Oct. 5, 1999, 113 Stat. 586; Pub. L. 106–398, § 1 [[div. A], title IV, §§ 415(b), 421(c), 424(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94 to 1654A–96; Pub. L. 107–107, div. A, title IV, § 415(b), Dec. 28, 2001, 115 Stat. 1073; Pub. L. 108–375, div. A, title X, § 1084(d)(34), Oct. 28, 2004, 118 Stat. 2063; Pub. L. 109–163, div. A, title V, § 515(b)(1)(II), Jan. 6, 2006, 119 Stat. 3233.)

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).

AMENDMENTS

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

2004—Subsec. (a). Pub. L. 108–375 inserted colon after ''Air National Guard'' in table.

2001—Subsec. (a). Pub. L. 107–107 inserted heading and amended text of subsec. (a) generally. Prior to amendment, text consisted of table setting out maximum 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 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard.

Subsec. (b). Pub. L. 107–107 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''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.''

Subsec. (c). Pub. L. 107–107 inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: ''Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.''

Subsec. (d). Pub. L. 107–107 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''Upon increasing under subsection (c)(2) of section 115 of this title the end strength that is authorized under subsection (a)(1)(B) of that section for a fiscal year for active-duty personnel and full-time National Guard duty personnel of an armed force who are to be paid from funds appropriated for reserve personnel, the Secretary of Defense may increase for that fiscal year the limitation that is set forth in subsection (a) of this section for the number of enlisted members of that armed force serving in any grade if the Secretary determines that such action is in the national interest. The percent of the increase may not exceed the percent by which the Secretary increases that end strength.''

Subsec. (e). Pub. L. 107–107 added subsec. (e).

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title IV, § 415(b)], amended table generally, increasing the fiscal year limitation on number of enlisted members in the Army in grade of E–9 from 645 to 764 and in grade of E–8

from 2,593 to 2,821, and in the Air Force in grade of E–9 from 405 to 502 and in grade of E–8 from 1,041 to 1,117.

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title IV, § 421(c)], added subsec. (c).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title IV, § 424(b)], added subsec. (d).

1999—Subsec. (a). Pub. L. 106–65 amended table generally, increasing the fiscal year limitation on number of enlisted members in the Army in grade of E–9 from 623 to 645 and in grade of E–8 from 2,585 to 2,593, and in the Air Force in grade of E–9 from 395 to 405 and in grade of E–8 from 997 to 1,041.

1998—Subsec. (a). Pub. L. 105–261, in table, in grade E–9 increased figure for Army from 603 to 623 and for Air Force from 366 to 395, and in grade E–8 increased figure for Air Force from 890 to 997.

1996—Pub. L. 104–106, § 1501(b)(10), substituted ''the National'' for ''National'' in section catchline.

Subsec. (a). Pub. L. 104–106, § 414(b), in table, in grade E–9, increased figure for Army from 569 to 603, for Air Force from 328 to 366, and for Marine Corps from 14 to 20, and in grade E–8, increased figure for Air Force from 840 to 890 and for Marine Corps from 74 to 94. All other figures remained unchanged.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1 [[div. A], title IV, § 415(b)] of Pub. L. 106–398 effective Oct. 1, 2000, see section 1 [[div. A], title IV, § 415(c)] of Pub. L. 106–398, set out as a note under section 12011 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective Oct. 1, 1998, see section 414(c) of Pub. L. 105–261, set out as a note under section 12011 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(10) of Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

CHAPTER 1203—ENLISTED MEMBERS

Sec.
12101. Definition.
12102. Reserve components: qualifications.
12103. Reserve components: terms.
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.
12108. Enlisted members: discharge or retirement for years of service or for age.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 517(f)(2), Dec. 28, 2001, 115 Stat. 1096, added item 12108.

§ 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) 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; Pub. L. 88–236, Dec. 23, 1963, 77 Stat. 474; Pub. L. 90–130, § 1(2), Nov. 8, 1967, 81 Stat. 374; Pub. L. 90–623, § 2(3), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title V, § 511(13), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12102 and amended Pub. L. 103–337, div. A, title XVI, §§ 1631(a), 1662(b)(2), 1675(a), Oct. 5, 1994, 108 Stat. 2964, 2989, 3017; Pub. L. 104–106, div. A, title XV, § 1501(a)(5)(A), Feb. 10, 1996, 110 Stat. 495.)

HISTORICAL AND REVISION NOTES

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

1996—Subsecs. (c), (d). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1631(a). See 1994 Amendment note below.

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''.

Subsecs. (c), (d). Pub. L. 103–337, § 1631(a), as amended by Pub. L. 104–106, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''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).''

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

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

§ 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 Homeland Security 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, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. 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 Homeland Security 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, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years.

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 one year after the date of that enlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, § 511; Pub. L. 85–861, § 1(8), Sept. 2, 1958, 72 Stat. 1439; Pub. L. 88–110, § 3, Sept. 3, 1963, 77 Stat. 135; Pub. L. 90–168, § 2(11), Dec. 1, 1967, 81 Stat. 523; Pub. L. 94–106, title VIII, § 802(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 95–485, title IV, § 405(c)(1), Oct. 20, 1978, 92 Stat. 1615; Pub. L. 96–107, title VIII, § 805(a), Nov. 9, 1979, 93 Stat. 812; Pub. L. 96–513, title V, § 511(14), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 97–252, title XI, § 1115(a), Sept. 8, 1982, 96 Stat. 750; Pub. L. 97–295, § 1(6), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–94, title X, § 1022(a)(1), Sept. 24, 1983, 97 Stat. 670; renumbered § 12103, Pub. L. 103–337, div. A, title XVI, § 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 533(a), Dec. 2, 2002, 116 Stat. 2547; Pub. L. 109–163, div. A, title V, § 515(b)(1)(JJ), Jan. 6, 2006, 119 Stat. 3233.)

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 surplusage. 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

2006—Subsecs. (b), (d). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

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

Subsec. (d). Pub. L. 107–314 substituted ''one year'' for ''270 days'' in last sentence.

Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

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 2002 AMENDMENTS

Pub. L. 107–314, div. A, title V, § 533(b), Dec. 2, 2002, 116 Stat. 2547, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to enlistments under section 12103(d) of title 10, United States Code, after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 2, 2002].''

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

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(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 sec-

tion] 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.

TRANSITION

Pub. L. 107–314, div. A, title V, § 533(c), Dec. 2, 2002, 116 Stat. 2547, provided that: ''In the case of a person who enlisted under section 12103(d) of title 10, United States Code, before the date of the enactment of this Act [Dec. 2, 2002] and who as of such date has not commenced the required initial period of active duty for training under that section, the amendment made by subsection (a) [amending this section] may be applied to that person, but only with the agreement of that person and the Secretary concerned.''

§ 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; Pub. L. 96–513, title V, § 511(15), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12104, Pub. L. 103–337, div. A, title XVI, § 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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.

§ 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).

§ 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 enlistment 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 8261 of this title, prior to repeal by Pub. L. 103–337, § 1662(b)(3).

§ 12108. Enlisted members: discharge or retirement for years of service or for age

Each reserve enlisted member of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the member is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the member is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107–107, div. A, title V, § 517(f)(1), Dec. 28, 2001, 115 Stat. 1095.)

EFFECTIVE DATE

Section effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 10154 of this title.

CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

Sec.
12201. Reserve officers: qualifications for appointment.
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.
12210. Attending Physician to the Congress: reserve grade.
12211. Officers: Army National Guard of the United States.
12212. Officers: Air National Guard of the United States.
12213. Officers; Army Reserve: transfer from Army National Guard of the United States.
12214. Officers; Air Force Reserve: transfer from Air National Guard of the United States.
12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, § 507(a)(2)(C), Oct. 17, 2006, 120 Stat. 2180, struck out ''while so serving'' after ''reserve grade'' in item 12210.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(11)(B), (13)(B), Feb. 10, 1996, 110 Stat. 496, substituted ''Reserve officers: qualifications'' for ''Qualifications'' in item 12201 and inserted ''the'' after ''National Guard of'' in items 12211, 12212, 12213, and 12214.

§ 12201. Reserve officers: qualifications for appointment

(a)(1) 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, except as provided in paragraph (2), 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.

(2) An officer transferred from the active-duty list of an armed force to a reserve active-status list of an armed force under section 647 of this title is not required to subscribe to the oath referred to in paragraph (1) in order to qualify for an appointment under that paragraph.

(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) 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.

(d) 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; Pub. L. 85–861, § 1(10)(A), Sept. 2, 1958, 72 Stat. 1440; Pub. L. 88–236, Dec. 23, 1963, 77 Stat. 474; Pub. L. 89–718, § 4, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(3), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V § 511(16), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 100–180, div. A, title VII, § 718(a), Dec. 4, 1987, 101 Stat. 1115; renumbered § 12201 and amended Pub. L. 103–337, div. A, title XVI, §§ 1631(b), 1662(c)(2), Oct. 5, 1994, 108 Stat. 2964, 2990; Pub. L. 104–106, div. A, title XV, § 1501(a)(5)(B), (b)(11)(A), Feb. 10, 1996, 110 Stat. 495, 496; Pub. L. 108–375, div. A, title V, § 501(c)(3), Oct. 28, 2004, 118 Stat. 1874.)

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 (less (c), and less applicability to enlistments), 222, 232 (less applicability to enlistments), 66 Stat. 486, 487, 489.
591(b)	50:941(a) (less applicability to enlistments).	
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

2004—Subsec. (a). Pub. L. 108–375 designated existing provisions as par. (1), inserted '', except as provided in paragraph (2),'' after ''the armed force concerned and'', and added par. (2).

1996—Pub. L. 104–106, § 1501(b)(11), substituted ''Reserve officers: qualifications for appointment'' for ''Reserve components: qualifications'' as section catchline.

Subsecs. (c) to (e). Pub. L. 104–106, § 1501(a)(5)(B), made technical correction to directory language of Pub. L. 103–337, § 1631(b). See 1994 Amendment note below.

1994—Pub. L. 103–337, § 1662(c)(2), renumbered section 591 of this title as this section.

Subsecs. (c) to (e). Pub. L. 103–337, § 1631(b), as amended by Pub. L. 104–106, § 1501(a)(5)(B), redesignated sub-

secs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (c) which read as follows: ''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).''

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 2004 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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, as amended by Pub. L. 109–163, div. A, title V, § 515(h), Jan. 6, 2006, 119 Stat. 3237, 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 Navy 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(d)] 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].''

§ 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 reserve officers in commissioned grades above lieutenant colonel and commander or below, except commissioned warrant officer, shall be made by the President alone. Appointments of reserve officers in commissioned grades above lieutenant colonel and 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) Subject to the authority, direction, and control of the President, the Secretary concerned may appoint as a reserve commissioned officer any regular officer transferred from the active-duty list of an armed force to the reserve active-status list of a reserve component under section 647 of this title, notwithstanding the requirements of subsection (a).

(c) 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; Pub. L. 85–861, § 1(10)(C), Sept. 2, 1958, 72 Stat. 1440; Pub. L. 92–129, title VI, § 601, Sept. 28, 1971, 85 Stat. 361; Pub. L. 96–513, title V, § 501(7), Dec. 12, 1980, 94 Stat. 2907; renumbered § 12203 and amended Pub. L. 103–337, div. A, title XVI, §§ 1632, 1662(c)(2), 1675(b)(1), Oct. 5, 1994, 108 Stat. 2965, 2990, 3017; Pub. L. 104–106, div. A, title XV, § 1501(a)(6), Feb. 10, 1996, 110 Stat. 495; Pub. L. 108–375, div. A, title V, § 501(c)(4), Oct. 28, 2004, 118 Stat. 1874.)

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

2004—Subsecs. (b), (c). Pub. L. 108–375 added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1632. See 1994 Amendment note below.

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''.

Pub. L. 103–337, § 1632, as amended by Pub. L. 104–106, substituted ''reserve officers in commissioned grades of lieutenant colonel and commander or below'' for ''Reserves in commissioned grades below lieutenant colonel and commander'' and ''reserve officers in commissioned grades above lieutenant colonel and commander'' for ''Reserves in commissioned grades above major and lieutenant commander''.

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 2004 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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.

DELEGATION OF FUNCTIONS

For assignment of functions of President under first sentence of subsec. (a) of this section, see sections 1(b) and 2(b) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

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.''

§ 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, Puerto Rico, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, § 594; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered § 12204, Pub. L. 103–337, div. A, title XVI, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

2006—Subsec. (b). Pub. L. 109–163 struck out ''and Territories'' after ''States''.

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,''.

§ 12205. Commissioned officers: appointment; educational requirement

(a) IN GENERAL.—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 Navy 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 Navy 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 Navy Reserve of a person appointed for service under the Naval Aviation Cadet (NAVCAD) program or the Seaman to Admiral 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 eight 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 Navy 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.

(d) WAIVER AUTHORITY FOR ARMY OCS GRADUATES AND CERTAIN MARINE CORPS OFFICERS.—(1) The Secretary of the Army may waive the applicability of subsection (a) to any officer whose original appointment in the Army as a Reserve officer is through the Army Officer Candidate School program.

(2) The Secretary of the Navy may waive the applicability of subsection (a) to any officer whose original appointment in the Marine Corps as a Reserve officer is through the Marine Corps meritorious commissioning program.

(3) Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than two years after the waiver is granted. The Secretary concerned may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

(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; Pub. L. 104–201, div. A, title

V, §§504, 505, title X, §1074(a)(22), Sept. 23, 1996, 110 Stat. 2512, 2660; Pub. L. 107–107, div. A, title V, §512(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 109–163, div. A, title V, §515(b)(1)(KK), Jan. 6, 2006, 119 Stat. 3234.)

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

2006—Subsecs. (a), (b)(2), (3), (c)(2)(C). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104–201, §1074(a)(22), substituted ''No person'' for ''After September 30, 1995, no person''.

Subsec. (b)(3). Pub. L. 104–201, §505, inserted ''or the Seaman to Admiral program'' after ''(NAVCAD) program''.

Subsec. (c)(2)(C). Pub. L. 104–201, §504, substituted ''eight years'' for ''three years''.

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).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §512(b), Dec. 28, 2001, 115 Stat. 1092, provided that: ''Subsection (d) of section 12205 of title 10, United States Code, as added by subsection (a), shall apply with respect to officers appointed before, on, or after the date of the enactment of this Act [Dec. 28, 2001].''

AUTHORITY FOR TEMPORARY WAIVER FOR CERTAIN ARMY RESERVE OFFICERS OF BACCALAUREATE DEGREE REQUIREMENT FOR PROMOTION OF RESERVE OFFICERS

Pub. L. 105–261, div. A, title V, §516, Oct. 17, 1998, 112 Stat. 2008, provided that:

''(a) WAIVER AUTHORITY FOR ARMY OCS GRADUATES.—The Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to any officer who before the date of the enactment of this Act [Oct. 17, 1998] was commissioned through the Army Officer Candidate School. Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than 2 years after the waiver is granted. The Secretary may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

''(b) EXPIRATION OF AUTHORITY.—A waiver under this section may not be granted after September 30, 2000.''

§ 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(LL), Jan. 6, 2006, 119 Stat. 3234.)

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) and Pub. L. 104–106, § 1501(c)(26).

AMENDMENTS

2006—Subsec. (b)(2). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

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.

§ 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; Pub. L. 96–513, title V, § 511(17), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12208, 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)*
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.

§ 12209. Officer candidates: enlisted Reserves

(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, Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104–106, div. A, title XV, § 1501(b)(12)(A), Feb. 10, 1996, 110 Stat. 496.)

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

1996—Pub. L. 104–106 substituted ''candidates: enlisted Reserves'' for ''candidates'' in section catchline.

1994—Pub. L. 103–337 renumbered section 600 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title

XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 12210. Attending Physician to the Congress: reserve grade

While serving as Attending Physician to the Congress, a Reserve holds the reserve grade of major general or rear admiral, as appropriate.

(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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(12)(B), Feb. 10, 1996, 110 Stat. 496; Pub. L. 109–364, div. A, title V, § 507(a)(2)(A), (B), Oct. 17, 2006, 120 Stat. 2180.)

AMENDMENTS

2006—Pub. L. 109–364 struck out ''while so serving'' after ''reserve grade'' in section catchline and substituted ''holds the reserve grade of major general or rear admiral, as appropriate'' for ''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'' in text.

1996—Pub. L. 104–106 substituted ''Congress: reserve grade while so serving'' for ''Congress'' in section catchline.

1994—Pub. L. 103–337 renumbered section 600a of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE

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 the 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, Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104–106, div. A, title XV, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

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).	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)	50:1114 (2d sentence).	
3351(c)	50:1123 (less (a)).	

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

1996—Pub. L. 104–106 inserted ''the'' after ''National Guard of'' in section catchline.

1994—Pub. L. 103–337 renumbered section 3351 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 12212. Officers: Air National Guard of the 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, Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104–106, div. A, title XV, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

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).	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)	50:1114 (2d sentence).	
8351(c)	50:1123 (less (a)).	

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

1996—Pub. L. 104–106 inserted ''the'' after ''National Guard of'' in section catchline.

1994—Pub. L. 103–337 renumbered section 8351 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 12213. Officers; Army Reserve: transfer from Army National Guard of the 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.

(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; Pub. L. 85–861, § 1(80)(A), Sept. 2, 1958, 72 Stat. 1468; Pub. L. 86–559, § 1(7), June 30, 1960, 74 Stat. 265; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered § 12213 and amended Pub. L. 103–337, div. A, title XVI, §§ 1636(a), 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2968, 2990, 3017; Pub. L. 104–106, div. A, title XV, § 1501(b)(13)(A), (14), Feb. 10, 1996, 110 Stat. 496.)

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.

AMENDMENTS

1996—Pub. L. 104–106, § 1501(b)(13)(A), inserted ''the'' after ''National Guard of'' in section catchline.

Subsec. (a). Pub. L. 104–106, § 1501(b)(14), substituted ''section 12203'' for ''section 593'' in last sentence.

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''.

Pub. L. 103–337, § 1636(a), struck out at end ''Notwithstanding any other provision of this chapter or section 12203 of this title, an officer who is transferred under this section shall be advanced 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.''

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 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title

XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 1501(f)(1) of Pub. L. 104–106 provided that: ''Section 1636 of the Reserve Officer Personnel Management Act [Pub. L. 103–337, amending this section and repealing sections 8356 and 8379 of this title] shall take effect on the date of the enactment of this Act [Feb. 10, 1996].''

Amendment by sections 1662(c)(3) and 1675(b)(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.

§ 12214. Officers; Air Force Reserve: transfer from Air National Guard of the 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; Pub. L. 87–651, title I, § 126, Sept. 7, 1962, 76 Stat. 514; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered § 12214 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2990, 3017; Pub. L. 104–106, div. A, title XV, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

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

1996—Pub. L. 104–106 inserted ''the'' after ''National Guard of'' in section catchline.

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective 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.

§ 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.

CHAPTER 1207—WARRANT OFFICERS

Sec.
12241. Warrant officers: grades; appointment, how made; term.
12242. Warrant officers: promotion.
12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.
12244. Warrant officers: discharge or retirement for years of service or for age.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 517(e)(2), Dec. 28, 2001, 115 Stat. 1095, added item 12244.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(15), Feb. 10, 1996, 110 Stat. 496, substituted ''promotion'' for ''promotions'' in item 12243.

§ 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; Pub. L. 99–145, title V, § 531(b), Nov. 8, 1985, 99 Stat. 633; Pub. L. 102–190, div. A, title XI, § 1131(2), Dec. 5, 1991, 105 Stat. 1505; renumbered § 12241, Pub. L. 103–337, div. A, title XVI, § 1662(d)(2), Oct. 5, 1994, 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). 50:944.	July 9, 1952, ch. 608, §§ 220, 223, 224 (less 3d and 4th sentences, and less applicability to commissioned officers), 66 Stat. 487.
597(c)	50:947. 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 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.''

§ 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; Pub. L. 102–190, div. A, title XI, § 1131(3), Dec. 5, 1991, 105 Stat. 1505; renumbered § 12242, Pub. L. 103–337, div. A, title XVI, § 1662(d)(2), Oct. 5, 1994, 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, Pub. L. 103–337, div. A, title XVI, § 1662(d)(2), Oct. 5, 1994, 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).	May 29, 1954, ch. 249, § 18 (as applicable to reserve warrant officers), 68 Stat. 165.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34:430d (as applicable to reserve warrant officers).	

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.

§ 12244. Warrant officers: discharge or retirement for years of service or for age

Each reserve warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the warrant officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the warrant officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107–107, div. A, title V, § 517(e)(1), Dec. 28, 2001, 115 Stat. 1095.)

EFFECTIVE DATE

Section effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 10154 of this title.

CHAPTER 1209—ACTIVE DUTY

Sec.
12301. Reserve components generally.
12302. Ready Reserve.
12303. Ready Reserve: members not assigned to, or participating satisfactorily in, units.
12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency.
12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation.
12306. Standby Reserve.
12307. Retired Reserve.
12308. Retention after becoming qualified for retired pay.
12309. Reserve officers: use of in expansion of armed forces.
12310. Reserves: for organizing, administering, etc., reserve components.
12311. Active duty agreements.
12312. Active duty agreements: release from duty.
12313. Reserves: release from active duty.
12314. Reserves: kinds of duty.
12315. Reserves: duty with or without pay.
12316. Payment of certain Reserves while on duty.
12317. Reserves: theological students; limitations.
12318. Reserves on active duty: duties; funding.
12319. Ready Reserve: muster duty.
12320. Reserve officers: grade in which ordered to active duty.
12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned.
12322. Active duty for health care.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, § 705(a)(2), Oct. 5, 1999, 113 Stat. 683, added item 12322.

1997—Pub. L. 105–85, div. A, title V, § 511(e)(2), Nov. 18, 1997, 111 Stat. 1729, inserted ''and certain Individual Ready Reserve members'' after ''Selected Reserve'' in item 12304.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(16), Feb. 10, 1996, 110 Stat. 496, substituted a semicolon for a colon in item 12304 and struck out ''on active duty'' after ''Retention'' in item 12308.

§ 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 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 as provided in subsection (a), 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 so ordered to active duty.

(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 as provided in subsection (a) 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.

(h)(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes; or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2) A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27, § 672; Pub. L. 85–861, §§ 1(13), 33(a)(5), Sept. 2, 1958, 72 Stat. 1440, 1564; Pub. L. 96–357, § 6, Sept. 24, 1980, 94 Stat. 1182; Pub. L. 96–584, § 1, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 99–500, § 101(c) [title IX, § 9122], Oct. 18, 1986, 100 Stat. 1783–82, 1783–127, and Pub. L. 99–591, § 101(c) [title IX, § 9122], Oct. 30, 1986, 100 Stat. 3341–82, 3341–127; Pub. L. 99–661, div. A, title V, §§ 522, 524(a), Nov. 14, 1986, 100 Stat. 3871; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), (2), Sept. 29, 1988, 102 Stat. 2059; renumbered § 12301 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(1), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 106–65, div. A, title V, § 512, Oct. 5, 1999, 113 Stat. 592; Pub. L. 108–375, div. A, title V, § 514(a), Oct. 28, 2004, 118 Stat. 1882.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
672(a)	50:961(a).	July 9, 1952, ch. 608, §§ 233 (less (b) and (f)), 234 (1st sentence), 66 Stat. 489, 490.
672(b)	50:961(c).	
672(c)	50:961(g).	
672(d)	50:961(d). 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

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

2004—Subsec. (a). Pub. L. 108–375, § 514(a)(1), struck out ''(other than for training)'' after ''that Secretary to active duty''.

Subsec. (c). Pub. L. 108–375, § 514(a)(2), substituted ''as provided in subsection (a)'' for ''(other than for training)'' and ''so ordered to active duty'' for ''ordered to active duty (other than for training)''.

Subsec. (e). Pub. L. 108–375, § 514(a)(3), substituted ''as provided in subsection (a)'' for ''(other than for training)''.

1999—Subsec. (h). Pub. L. 106–65 added subsec. (h).

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.

§ 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 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 Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty, without their consent, under this section at any one time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 28, § 673; Pub. L. 85–861, §§ 1(14), 33(a)(5), Sept. 2, 1958, 72 Stat. 1441, 1564; Pub. L. 93–155, title III, § 303(a), Nov. 16, 1973, 87 Stat. 607; renumbered § 12302, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108–136, div. A, title X, § 1031(a)(61), Nov. 24, 2003, 117 Stat. 1603; Pub. L. 108–375, div. A, title V, § 514(b), Oct. 28, 2004, 118 Stat. 1883.)

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

2004—Subsecs. (a), (c). Pub. L. 108–375 struck out ''(other than for training)'' after ''active duty''.

2003—Subsec. (d). Pub. L. 108–136 struck out subsec. (d) which read as follows: ''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.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in concluding provisions.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

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).

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.

EXECUTIVE ORDER NO. 12743

Ex. Ord. No. 12743, Jan. 18, 1991, 56 F.R. 2661, as amended by Ex. Ord. No. 13286, § 35, Feb. 28, 2003, 68 F.R. 10625, which related to ordering the Ready Reserve of the Armed Forces to active duty, was revoked by Ex. Ord. No. 13350, July 29, 2004, 69 F.R. 46055, listed in a table under section 1701 of Title 50, War and National Defense.

EX. ORD. NO. 13223. ORDERING THE READY RESERVE OF THE ARMED FORCES TO ACTIVE DUTY AND DELEGATING CERTAIN AUTHORITIES TO THE SECRETARY OF DEFENSE AND THE SECRETARY OF HOMELAND SECURITY

Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended by Ex. Ord. No. 13253, Jan. 16, 2002, 67 F.R. 2791; Ex. Ord. No. 13286, § 9, Feb. 28, 2003, 68 F.R. 10622, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 301 of title 3, United States Code, and in furtherance of the proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks [Proc. No. 7463, 50 U.S.C. 1621 note], which declared a national emergency by reason of the terrorist attacks on the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States, I hereby order as follows:

SECTION 1. To provide additional authority to the Department of Defense and the Department of Transportation [Homeland Security] to respond to the continuing and immediate threat of further attacks on the United States, the authority under title 10, United States Code, to order any unit, and any member of the Ready Reserve not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty 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(a)(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 Homeland Security 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 following authorities vested in the President are hereby invoked to the full extent provided by the terms thereof: section 527 of title 10, United States Code, to suspend the operation of sections 523, 525, and 526 of that title, regarding officer and warrant officer strength and distribution; and sections 123, 123a, and 12006 of title 10, United States Code, to suspend certain laws relating to promotion, involun-

tary retirement, and separation of commissioned officers; end strength limitations; and Reserve component officer strength limitations.

SEC. 3. To allow for the orderly administration of personnel within the armed forces, the authorities vested in the President by sections 331, 359, and 367 of title 14, United States Code, relating to the authority to order to active duty certain officers and enlisted members of the Coast Guard and to detain enlisted members, are 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 123, 123a, 527, and 12006 of title 10, United States Code, as invoked by sections 2 and 3 of this order.

SEC. 5. The Secretary of Homeland Security is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in sections 331, 359, and 367 of title 14, United States Code, when the Coast Guard is not serving as part of the Navy, as invoked by section 2 of this order, to recall any regular officer or enlisted member on the retired list to active duty and to detain any enlisted member beyond the term of his or her enlistment. The Secretary of Homeland Security is further designated and empowered, without the approval, ratification or any other action by the President, to exercise the authority vested in the President by sections 123 and 123a of title 10, United States Code, and sections 149 (detail members to assist foreign governments), 275(a) (suspension of provisions on selection, promotion, or involuntary separation of officers), and 722 (administration of reserve forces) of title 14, United States Code, as invoked by section 2 of Executive Order 13223.

SEC. 6. The authority delegated by this order to the Secretary of Defense and the Secretary of Homeland Security 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. 7. Based upon my determination under 10 U.S.C. 2201(c) that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty for the Department of Defense beyond the number for which funds are provided in the appropriation Act for the Department of Defense, which, by virtue of 14 U.S.C. 652, applies to the Department of Homeland Security with respect to the Coast Guard, the Secretary of Defense and the Secretary of Homeland Security may provide for the cost of such additional members under their respective jurisdictions as an excepted expense under section 11(a) of title 41, United States Code.

SEC. 8. 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.

SEC. 9. This order is effective immediately and shall be promptly transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH.

§ 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, as amended by Ex. Ord. No. 13286, § 64, Feb. 28, 2003, 68 F.R. 10629, 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 Homeland Security 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 Homeland Security 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.

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 and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) AUTHORITY.—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 or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, 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), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty for not more than 365 days..[1]

(b) SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving—

(1) a use or threatened use of a weapon of mass destruction; or

(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property.

(c) LIMITATIONS.—(1) Except to perform any of the functions authorized by chapter 15 or section 12406 of this title or by subsection (b), no unit or member of a reserve component may be ordered to active duty under this section to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(3) No unit or member of a reserve component may be ordered to active duty under this section to provide assistance referred to in subsection (b) unless the President determines that the requirements for responding to an emergency referred to in that subsection have exceeded, or will exceed, the response capabilities of local, State, and Federal civilian agencies.

(d) EXCLUSION FROM STRENGTH LIMITATIONS.—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) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Homeland Security shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Homeland Security to order any unit or member of the Selected Reserve or Individual Ready 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) TERMINATION OF DUTY.—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, or any member of the Individual Ready Reserve, 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) RELATIONSHIP TO WAR POWERS RESOLUTION.—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.).

(i) CONSIDERATIONS FOR INVOLUNTARY ORDER TO ACTIVE DUTY.—(1) In determining which members of the Selected Reserve and Individual Ready Reserve will be ordered to duty without their consent under this section, appropriate consideration shall be given to—

(A) 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;

(B) the frequency of assignments during service career;

(C) family responsibilities; and

(D) employment necessary to maintain the national health, safety, or interest.

(2) The Secretary of Defense shall prescribe such policies and procedures as the Secretary considers necessary to carry out this subsection.

(j) DEFINITIONS.—In this section:

(1) The term ''Individual Ready Reserve mobilization category'' means, in the case of any

[1] So in original.

reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

(2) The term ''weapon of mass destruction'' has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

(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; Pub. L. 105–85, div. A, title V, § 511(b)–(e)(1), Nov. 18, 1997, 111 Stat. 1728, 1729; Pub. L. 105–261, div. A, title V, § 511(a), Oct. 17, 1998, 112 Stat. 2005; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 514(a), Dec. 2, 2002, 116 Stat. 2539; Pub. L. 108–136, div. A, title V, § 515, Nov. 24, 2003, 117 Stat. 1460; Pub. L. 108–375, div. A, title V, § 514(c), Oct. 28, 2004, 118 Stat. 1883; Pub. L. 109–364, div. A, title V, § 522, title X, § 1076(c), Oct. 17, 2006, 120 Stat. 2192, 2406.)

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

2006—Subsec. (a). Pub. L. 109–364, § 522(a), substituted ''365 days.'' for ''270 days''.

Subsec. (c)(1). Pub. L. 109–364, § 1076(c), substituted ''Except to perform any of the functions authorized by chapter 15 or section 12406 of this title or by subsection (b), no unit or member of a reserve component may be ordered to active duty under this section'' for ''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, except as provided in subsection (b),''.

Subsecs. (i), (j). Pub. L. 109–364, § 522(b), added subsec. (i) and redesignated former subsec. (i) as (j).

2004—Subsec. (a). Pub. L. 108–375 struck out ''(other than for training)'' after ''active duty''.

2003—Subsec. (b)(2). Pub. L. 108–136, § 515(1), substituted ''significant'' for ''catastrophic''.

Subsec. (c)(3). Pub. L. 108–136, § 515(2), added par. (3).

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

Subsec. (b). Pub. L. 107–314 substituted ''involving—

''(1) a use or threatened use of a weapon of mass destruction; or

''(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.''

for ''involving a use or threatened use of a weapon of mass destruction.''

Subsecs. (e), (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1998—Subsec. (a). Pub. L. 105–261, § 511(a)(1)(A), (3)(A), inserted heading and inserted ''or that it is necessary to provide assistance referred to in subsection (b)'' after ''operational mission'' in text.

Subsec. (b). Pub. L. 105–261, § 511(a)(1)(D), added subsec. (b). Former subsec. (b) redesignated subsec. (c)(1).

Subsec. (c). Pub. L. 105–261, § 511(a)(1)(B), (C), redesignated subsec. (b) as par. (1) of subsec. (c), inserted subsec. heading, substituted ''or, except as provided in subsection (b), to provide'' for '', or to provide'', and redesignated former subsec. (c) as par. (2).

Subsecs. (d) to (h). Pub. L. 105–261, § 511(a)(3)(B)–(F), inserted headings.

Subsec. (i). Pub. L. 105–261, § 511(a)(2), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''For purposes of this section, the term 'Individual Ready Reserve mobilization category' means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.''

1997—Pub. L. 105–85, § 511(e)(1), inserted ''and certain Individual Ready Reserve members'' after ''Selected Reserve'' in section catchline.

Subsec. (a). Pub. L. 105–85, § 511(b), inserted ''or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned,'' after ''of this title),''.

Subsec. (c). Pub. L. 105–85, § 511(c), inserted ''and the Individual Ready Reserve'' after ''Selected Reserve'' and '', of whom not more than 30,000 may be members of the Individual Ready Reserve'' before period at end.

Subsec. (f). Pub. L. 105–85, § 511(d)(1), inserted ''or Individual Ready Reserve'' after ''Selected Reserve''.

Subsec. (g). Pub. L. 105–85, § 511(d)(2), inserted '', or any member of the Individual Ready Reserve,'' after ''to serve as a unit'' in introductory provisions.

Subsec. (i). Pub. L. 105–85, § 511(d)(3), added subsec. (i).

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 2002 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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 COMBAT 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 active 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, as amended by Ex. Ord. No. 13286, § 39, Feb. 28, 2003, 68 F.R. 10626, 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 Homeland Security 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.

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, as amended by Ex. Ord. No. 13286, § 37, Feb. 28, 2003, 68 F.R. 10626, 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 Homeland Security 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.

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.

EX. ORD. NO. 12982. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12982, Dec. 8, 1995, 60 F.R. 63895, as amended by Ex. Ord. No. 13286, § 21, Feb. 28, 2003, 68 F.R. 10624, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, 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 operations in and around former Yugoslavia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the 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 shall be published in the Federal Register and transmitted to the Congress.

EX. ORD. NO. 13076. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 13076, Feb. 24, 1998, 63 F.R. 9719, as amended by Ex. Ord. No. 13286, § 17, Feb. 28, 2003, 68 F.R. 10623, 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 12304 of title 10, 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 operations in and around Southwest Asia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the 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.

EX. ORD. NO. 13120. ORDERING SELECTED RESERVE AND CERTAIN INDIVIDUAL READY RESERVE MEMBERS OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 13120, Apr. 27, 1999, 64 F.R. 23007, as amended by Ex. Ord. No. 13286, § 14, Feb. 28, 2003, 68 F.R. 10623, 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 12304 of title 10, 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 operations in and around the former Yugoslavia related to the conflict in Kosovo. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, under their respective jurisdictions, 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, or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, and to terminate the service of those units and members ordered to active duty.

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.

§ 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.

(c) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(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; Pub. L. 107–107, div. A, title V, § 508(a), Dec. 28, 2001, 115 Stat. 1090.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 added subsec. (c).

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, as amended by Ex. Ord. No. 13286, § 38, Feb. 28, 2003, 68 F.R. 10626, 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 Homeland Security 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 Homeland Security 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.

§ 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b).

(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 under section 12301(a) of this title, 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) notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual

under such section 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; Pub. L. 87–651, title I, § 130, Sept. 7, 1962, 76 Stat. 514; renumbered § 12306 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(4), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 108–375, div. A, title V, § 514(d), Oct. 28, 2004, 118 Stat. 1883.)

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 inserted, 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

2004—Subsec. (a). Pub. L. 108–375, § 514(d)(1), substituted ''active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b)'' for ''active duty (other than for training) only as provided in section 12301 of this title''.

Subsec. (b)(1). Pub. L. 108–375, § 514(d)(2)(A), substituted ''under section 12301(a) of this title'' for ''(other than for training)''.

Subsec. (b)(2). Pub. L. 108–375, § 514(d)(2)(B), substituted ''notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent'' for ''no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent''.

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.

§ 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 Retired 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; Pub. L. 98–94, title X, § 1017(a), Sept. 24, 1983, 97 Stat. 669; Pub. L. 101–189, div. A, title VI, § 651(d), Nov. 29, 1989, 103 Stat. 1461; renumbered § 12307 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(5), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104–106, div. A, title XV, § 1501(b)(17), Feb. 10, 1996, 110 Stat. 497.)

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

1996—Pub. L. 104–106 substituted ''Retired Reserve (other'' for ''Ready Reserve (other''.

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective 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.

§ 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 Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(6), Oct. 5, 1994, 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, 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)*
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) AUTHORITY.—(1) The Secretary concerned may order a member of a reserve component under the Secretary's jurisdiction to active duty pursuant to section 12301(d) of this title to perform Active Guard and Reserve duty organizing, administering, recruiting, instructing, or training the reserve components.

(2) A Reserve ordered to active duty under paragraph (1) shall be ordered in the Reserve's reserve grade. While so serving, the Reserve continues to be eligible for promotion as a Reserve, if otherwise qualified.

(b) DUTIES.—A Reserve on active duty under subsection (a) may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the Reserve's primary Active Guard and Reserve duties described in subsection (a)(1):

(1) Supporting operations or missions assigned in whole or in part to the reserve components.

(2) Supporting operations or missions performed or to be performed by—

(A) a unit composed of elements from more than one component of the same armed force; or

(B) a joint forces unit that includes—

(i) one or more reserve component units; or

(ii) a member of a reserve component whose reserve component assignment is in a position in an element of the joint forces unit.

(3) Advising the Secretary of Defense, the Secretaries of the military departments, the Joint Chiefs of Staff, and the commanders of the combatant commands regarding reserve component matters.

(4) Instructing or training in the United States or the Commonwealth of Puerto Rico or possessions of the United States of—

(A) active-duty members of the armed forces;

(B) members of foreign military forces (under the same authorities and restrictions applicable to active-duty members providing such instruction or training);

(C) Department of Defense contractor personnel; or

(D) Department of Defense civilian employees.

(c) OPERATIONS RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION AND TERRORIST ATTACKS.—(1) Notwithstanding subsection (b), a Reserve on active duty as described in subsection (a), or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a), may, subject to paragraph (3), perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving any of the following:

(A) The use or threatened use of a weapon of mass destruction (as defined in section 12304(i)(2)[1] of this title) in the United States.

(B) A terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.

(C) The intentional or unintentional release of nuclear, biological, radiological, or toxic or poisonous chemical materials in the United States that results, or could result, in catastrophic loss of life or property.

(D) A natural or manmade disaster in the United States that results in, or could result in, catastrophic loss of life or property.

[1] So in original. Probably should be section ''12304(j)(2)''.

(2) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for a Reserve performing duties under the authority of paragraph (1) shall be paid from the appropriation that is available to pay such costs for other members of the reserve component of that Reserve who are performing duties as described in subsection (a).

(3) A Reserve may perform duty described in paragraph (1) only while assigned to a reserve component weapons of mass destruction civil support team.

(4) Reserves on active duty who are performing duties described in paragraph (1) shall be counted against the annual end strength authorizations required by section 115(a)(1)(B) and 115(a)(2) of this title. The justification material for the defense budget request for a fiscal year shall identify the number and component of the Reserves programmed to be performing duties described in paragraph (1) during that fiscal year.

(5) A reserve component weapons of mass destruction civil support team, and any Reserve assigned to such a team, may not be used to respond to an emergency described in paragraph (1) unless the Secretary of Defense has certified to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that that team, or that Reserve, possesses the requisite skills, training, and equipment to be proficient in all mission requirements.

(6) If the Secretary of Defense submits to Congress any request for the enactment of legislation to modify the requirements of paragraphs (1) and (3), the Secretary shall provide with the request—

(A) justification for each such requested modification; and

(B) the Secretary's plan for sustaining the qualifications of the personnel and teams described in paragraph (3).

(7) In this subsection, the term ''United States'' includes the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(d) TRAINING.—A Reserve on active duty as described in subsection (a) may be provided training consistent with training provided to other members on active duty, as the Secretary concerned sees fit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, § 678; renumbered § 12310 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(7), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104–201, div. A, title V, § 541, Sept. 23, 1996, 110 Stat. 2521; Pub. L. 105–261, div. A, title V, § 511(b)(1), Oct. 17, 1998, 112 Stat. 2006; Pub. L. 106–65, div. A, title V, §§ 555(a), (b), 556, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 617–619, 774; Pub. L. 107–314, div. A, title V, § 514(b), title IX, § 933, Dec. 2, 2002, 116 Stat. 2539, 2626; Pub. L. 109–364, div. A, title V, §§ 525(a), 527, Oct. 17, 2006, 120 Stat. 2193, 2196.)

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

2006—Subsecs. (a), (b). Pub. L. 109–364, § 525(a), amended subsecs. (a) and (b) generally, substituting provisions relating to authority of the Secretary concerned to order a member of a reserve component to active duty and setting forth duties including supporting operations or missions, providing advice regarding reserve component matters, and providing instruction or training of active-duty members of the armed forces or foreign military forces and Department of Defense contractor personnel or civilian employees, for provisions relating to grade when a Reserve is ordered to active duty and setting forth duties including supporting operations or missions and providing advice regarding reserve component matters.

Subsec. (c). Pub. L. 109–364, § 527(b)(1), substituted ''Operations Relating to Defense Against Weapons of Mass Destruction and Terrorist Attacks'' for ''Duties Relating to Defense Against Weapons of Mass Destruction'' in heading.

Subsec. (c)(1). Pub. L. 109–364, § 527(a)(1)(A), substituted ''involving any of the following:'' for ''involving—'' in introductory provisions.

Subsec. (c)(1)(A) to (D). Pub. L. 109–364, § 527(a)(1)(B), added subpars. (A) to (D) and struck out former subpars. (A) and (B) which read as follows:

''(A) the use of a weapon of mass destruction (as defined in section 12304(i)(2) of this title); or

''(B) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.''

Subsec. (c)(3). Pub. L. 109–364, § 527(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A Reserve may perform duties described in paragraph (1) only while assigned to a reserve component rapid assessment element team and performing those duties within the geographical limits of the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.''

Subsec. (c)(5). Pub. L. 109–364, § 527(b)(2), substituted ''weapons of mass destruction civil support team'' for ''rapid assessment element team''.

Subsec. (c)(6). Pub. L. 109–364, § 527(b)(3)(A), substituted ''paragraphs (1) and (3)'' for ''paragraph (3)'' in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 109–364, § 527(b)(3)(B), substituted ''(3)'' for ''(3)(B)''.

Subsec. (c)(7). Pub. L. 109–364, § 527(a)(3), added par. (7).

2002—Subsec. (c)(1). Pub. L. 107–314, § 514(b), substituted ''involving—

''(A) the use of a weapon of mass destruction (as defined in section 12304(i)(2) of this title); or

''(B) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.''

for ''involving the use of a weapon of mass destruction (as defined in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1))).''

Subsec. (c)(3). Pub. L. 107–314, § 933, substituted ''only while assigned'' for ''only—

''(A) while assigned to the Department of Defense Consequence Management Program Integration Office; or

''(B) while assigned''.

1999—Subsec. (a). Pub. L. 106–65, § 555(b)(1), inserted heading.

Subsec. (b). Pub. L. 106–65, § 555(a)(2), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 106–65, § 555(b)(2), inserted heading.

Subsec. (c)(1). Pub. L. 106–65, § 555(b)(2), substituted ''Notwithstanding subsection (b), a Reserve'' for ''A Reserve''.

Subsec. (c)(4). Pub. L. 106–65, § 556(a), struck out first sentence which read as follows: ''The number of Reserves on active duty who are performing duties described in paragraph (1) at the same time may not exceed 228.''

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

Subsec. (c)(6). Pub. L. 106–65, § 556(b), struck out ''or to increase the number of personnel authorized by paragraph (4)'' after ''requirements of paragraph (3)'' in introductory provisions and ''or for the requested additional personnel and explain the need for the increase in the context of existing or projected similar capabilities at the local, State, and Federal levels'' after ''modification'' in subpar. (A).

Subsec. (d). Pub. L. 106–65, § 555(a)(1), (b)(3), redesignated subsec. (b) as (d) and inserted heading.

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

1996—Subsec. (b). Pub. L. 104–201 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''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.''

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.

ADDITIONAL WEAPONS OF MASS DESTRUCTION CIVIL SUPPORT TEAMS

Pub. L. 107–314, div. A, title XIV, § 1403, Dec. 2, 2002, 116 Stat. 2676, provided that:

''(a) ESTABLISHMENT OF ADDITIONAL TEAMS.—The Secretary of Defense shall—

''(1) establish 23 additional teams designated as Weapons of Mass Destruction Civil Support Teams, for a total of 55 such teams; and

''(2) ensure that of such 55 teams, there is at least one team established in each State and territory.

''(b) PLAN.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary shall submit to Congress a plan, in furtherance of subsection (a), for establishing at least one Weapons of Mass Destruction Civil Support Team in each State and territory that does not have such a team as of the date of the enactment of this Act. The plan shall include the following:

''(1) A schedule and budget for manning, training, and equipping the new teams as rapidly as is possible without jeopardizing the attainment of full effectiveness by the new teams.

''(2) A discussion of whether the mission of the Weapons of Mass Destruction Civil Support Teams should be expanded and, if so, how.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'Weapons of Mass Destruction Civil Support Team' means a team of members of the reserve components of the Armed Forces that is established under section 12310(c) of title 10, United States Code, in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction.

''(2) The term 'State and territory' means each of the several States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.''

§ 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 Homeland Security 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; Pub. L. 96–513, title V, § 511(19), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12311, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
679(a)	50:963(a) (less last sentence).	July 9, 1952, ch. 608, §§ 235 (less last sentence of (a), and less (b)), 236, 66 Stat. 491.
	50:963(c).	
	50:963(f).	
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 ''obligated 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

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

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 2002 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 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; Pub. L. 87–509, § 2, June 28, 1962, 76 Stat. 121; Pub. L. 98–525, title V, § 533(b), title XIV, § 1405(17), Oct. 19, 1984, 98 Stat. 2528, 2622; renumbered § 12312 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(8), Oct. 5, 1994, 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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.

§ 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, 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)*
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, 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)*
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, 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)*
683(a)	50:971.	July 9, 1952, ch. 608, §§ 240, 241, 66 Stat. 492.
683(b)	50:972.	

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.

§ 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 re-

tainer 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

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 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 pur-

poses 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.

§ 12320. Reserve officers: grade in which ordered to active duty

A reserve officer who is ordered to active duty or full-time National Guard duty shall be ordered to active duty or full-time National Guard 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 and placed on the active-duty list 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; Pub. L. 104–106, div. A, title XV, § 1501(a)(2), Feb. 10, 1996, 110 Stat. 495.)

AMENDMENTS

1996—Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1625. See 1994 Amendment note below.

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.

Pub. L. 103–337, § 1625, as amended by Pub. L. 104–106, inserted ''or full-time National Guard duty'' after ''who is ordered to active duty'' and after ''shall be ordered to active duty'' and inserted ''and placed on the active-duty list'' after ''and is ordered to active duty''.

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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 Na-

tional 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, as amended by Pub. L. 104–106, div. A, title XV, § 1501(d)(2), Feb. 10, 1996, 110 Stat. 500, provided that: ''The Secretary of the military department concerned may waive the prohibition in section 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.''

§ 12322. Active duty for health care

A member of a uniformed service described in paragraph (1)(B) or (2)(B) of section 1074a(a) of this title may be ordered to active duty, and a member of a uniformed service described in paragraph (1)(A) or (2)(A) of such section may be continued on active duty, for a period of more than 30 days while the member is being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty as described in any of such paragraphs.

(Added Pub. L. 106–65, div. A, title VII, § 705(a)(1), Oct. 5, 1999, 113 Stat. 683.)

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.
12401. Army and Air National Guard of the United States: status.
12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service.
12404. Army and Air National Guard of the 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.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(A), Feb. 10, 1996, 110 Stat. 497, inserted ''the'' after ''Army and Air National Guard of'' in items 12401, 12402, 12403, and 12404.

§ 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.

§ 12402. Army and Air National Guard of the 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

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).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 12403. Army and Air National Guard of the 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

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).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 12404. Army and Air National Guard of the 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

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).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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 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; amended Pub. L. 109–163, div. A, title X, § 1057(a)(5), Jan. 6, 2006, 119 Stat. 3440.)

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).

AMENDMENTS

2006—Par. (1). Pub. L. 109–163 substituted ''Commonwealths or possessions'' for ''Territories, Commonwealths, or possessions''.

§ 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 State, 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 States affected by the call.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(19), Feb. 10, 1996, 110 Stat. 497.)

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).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''another State'' for ''another of those jurisdictions'' and ''States affected'' for ''jurisdictions affected''.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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 under section 12301(a), 12302, or 12304 of this title 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; amended Pub. L. 104–201, div. A, title V, § 523, Sept. 23, 1996, 110 Stat. 2517.)

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).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 inserted ''under section 12301(a), 12302, or 12304 of this title'' after ''called into Federal service''.

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.
12503. Ready Reserve: funeral honors duty.
[12505. Repealed.]

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title V, § 507(f)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105, struck out item 12505 ''Selection of officers for certain senior reserve component positions''.

1999—Pub. L. 106–65, div. A, title V, §§ 554(a)(2), 578(k)(2)(B), Oct. 5, 1999, 113 Stat. 616, 631, added items 12503 and 12505.

§ 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.

§ 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).

§ 12503. Ready Reserve: funeral honors duty

(a) ORDER TO DUTY.—A member of the Ready Reserve may be ordered to funeral honors duty, with the consent of the member, in preparation for or to perform funeral honors functions at the funeral of a veteran as defined in section 1491 of this title. Performance of funeral honors duty by a Reserve not on active duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

(1) service credit under section 12732(a)(2)(E) of this title; and

(2) as directed by the Secretary concerned, either—

(A) the allowance under section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under chapter 7 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) REGULATIONS.—The exercise of authority under subsection (a) is subject to regulations prescribed by the Secretary of Defense.

(e) MEMBERS OF THE NATIONAL GUARD.—This section does not apply to members of the Army National Guard of the United States or the Air National Guard of the United States. The performance of funeral honors duty by those members is provided for in section 115 of title 32.

(Added Pub. L. 106–65, div. A, title V, § 578(g)(3), Oct. 5, 1999, 113 Stat. 628; amended Pub. L. 106–398, § 1 [[div. A], title V, § 575(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138; Pub. L. 107–107, div. A, title V, § 562(a), Dec. 28, 2001, 115 Stat. 1119.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted at end ''Performance of funeral honors duty by a Reserve not on active duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.''

2000—Subsec. (b)(2). Pub. L. 106–398 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''if authorized by the Secretary concerned, the allowance under section 435 of title 37.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 562(c), Dec. 28, 2001, 115 Stat. 1120, provided that: ''The amendments made by this section [amending this section and section 115 of Title 32, National Guard] shall apply to funeral honors duty performed on or after October 30, 2000.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 575(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, provided that: ''The amendments made by this section [amending this section, section 115 of Title 32, National Guard, and section 435 of Title 37, Pay and Allowances of the Uniformed Services] shall apply with respect to funeral honors duty performed on or after October 1, 2000.''

[§ 12505. Repealed. Pub. L. 106–398, § 1 [[div. A], title V, § 507(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105]

Section, added Pub. L. 106–65, div. A, title V, § 554(a)(1), Oct. 5, 1999, 113 Stat. 616, related to selection of officers for certain senior reserve component positions.

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

Sec.
12521. Definitions.
12522. Establishment of insurance program.
12523. Risk insured.
12524. Enrollment and election of benefits.
12525. Benefit amounts.
12526. Premiums.
12527. Payment of premiums.
12528. Reserve Mobilization Income Insurance Fund.
12529. Board of Actuaries.
12530. Payment of benefits.
12531. Purchase of insurance.
12532. Termination for nonpayment of premiums; forfeiture.
12533. Termination of program.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, § 512(b), Nov. 18, 1997, 111 Stat. 1729, added item 12533.

§ 12521. Definitions

In this chapter:

(1) The term ''insurance program'' means the Ready Reserve Mobilization Income Insurance Program established under section 12522 of this title.

(2) The term ''covered service'' means active duty performed by a member of a reserve component under an order to active duty for a period of more than 30 days which specifies that the member's service—

(A) is in support of an operational mission for which members of the reserve components have been ordered to active duty without their consent; or

(B) is in support of forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

(3) The term ''insured member'' means a member of the Ready Reserve who is enrolled for coverage under the insurance program in accordance with section 12524 of this title.

(4) The term ''Secretary'' means the Secretary of Defense.

(5) The term ''Department'' means the Department of Defense.

(6) The term ''Board of Actuaries'' means the Department of Defense Education Benefits Board of Actuaries referred to in section 2006(e)(1) of this title.

(7) The term ''Fund'' means the Reserve Mobilization Income Insurance Fund established by section 12528(a) of this title.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 299.)

EFFECTIVE DATE

Section 512(b) of Pub. L. 104–106 provided that: ''The insurance program provided for in chapter 1214 of title 10, United States Code, as added by subsection (a), and the requirement for deductions and contributions for that program shall take effect on September 30, 1996, or on any earlier date declared by the Secretary and published in the Federal Register.''

§ 12522. Establishment of insurance program

(a) ESTABLISHMENT.—The Secretary shall establish for members of the Ready Reserve (including the Coast Guard Reserve) an insurance program to be known as the ''Ready Reserve Mobilization Income Insurance Program''.

(b) ADMINISTRATION.—The insurance program shall be administered by the Secretary. The Secretary may prescribe in regulations such rules, procedures, and policies as the Secretary considers necessary or appropriate to carry out the insurance program.

(c) AGREEMENT WITH SECRETARY OF HOMELAND SECURITY.—The Secretary and the Secretary of Homeland Security shall enter into an agreement with respect to the administration of the insurance program for the Coast Guard Reserve.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 299; amended Pub. L. 107–296, title XVII, § 1704(b)(1), (7), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''Homeland Security'' for ''Transportation'' in heading and text.

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 12523. Risk insured

(a) IN GENERAL.—The insurance program shall insure members of the Ready Reserve against the risk of being ordered into covered service.

(b) ENTITLEMENT TO BENEFITS.—(1) An insured member ordered into covered service shall be entitled to payment of a benefit for each month (and fraction thereof) of covered service that exceeds 30 days of covered service, except that no member may be paid under the insurance program for more than 12 months of covered service served during any period of 18 consecutive months.

(2) Payment shall be based solely on the insured status of a member and on the period of

covered service served by the member. Proof of loss of income or of expenses incurred as a result of covered service may not be required.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 300.)

§ 12524. Enrollment and election of benefits

(a) ENROLLMENT.—(1) Except as provided in subsection (f), upon first becoming a member of the Ready Reserve, a member shall be automatically enrolled for coverage under the insurance program. An automatic enrollment of a member shall be void if within 60 days after first becoming a member of the Ready Reserve the member declines insurance under the program in accordance with the regulations prescribed by the Secretary.

(2) Promptly after the insurance program is established, the Secretary shall offer to members of the reserve components who are then members of the Ready Reserve (other than members ineligible under subsection (f)) an opportunity to enroll for coverage under the insurance program. A member who fails to enroll within 60 days after being offered the opportunity shall be considered as having declined to be insured under the program.

(3) A member of the Ready Reserve ineligible to enroll under subsection (f) shall be afforded an opportunity to enroll upon being released from active duty in accordance with regulations prescribed by the Secretary if the member has not previously had the opportunity to be enrolled under paragraph (1) or (2). A member who fails to enroll within 60 days after being afforded that opportunity shall be considered as having declined to be insured under the program.

(b) ELECTION OF BENEFIT AMOUNT.—The amount of a member's monthly benefit under an enrollment shall be the basic benefit under subsection (a) of section 12525 of this title unless the member elects a different benefit under subsection (b) of such section within 60 days after first becoming a member of the Ready Reserve or within 60 days after being offered the opportunity to enroll, as the case may be.

(c) ELECTIONS IRREVOCABLE.—(1) An election to decline insurance pursuant to paragraph (1) or (2) of subsection (a) is irrevocable.

(2) The amount of coverage may not be increased after enrollment.

(d) ELECTION TO TERMINATE.—A member may terminate an enrollment at any time.

(e) INFORMATION TO BE FURNISHED.—The Secretary shall ensure that members referred to in subsection (a) are given a written explanation of the insurance program and are advised that they have the right to decline to be insured and, if not declined, to elect coverage for a reduced benefit or an enhanced benefit under subsection (b).

(f) MEMBERS INELIGIBLE TO ENROLL.—Members of the Ready Reserve serving on active duty (or full-time National Guard duty) are not eligible to enroll for coverage under the insurance program. The Secretary may define any additional category of members of the Ready Reserve to be excluded from eligibility to purchase insurance under this chapter.

(g) MEMBERS OF INDIVIDUAL READY RESERVE.—Notwithstanding any other provision of this section, and pursuant to regulations issued by the Secretary, a member of the Individual Ready Reserve who becomes a member of the Selected Reserve shall not be denied eligibility to purchase insurance under this chapter upon becoming a member of the Selected Reserve unless the member previously declined to enroll in the program of insurance under this chapter while a member of the Selected Reserve.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 300; amended Pub. L. 104–201, div. A, title V, § 542, Sept. 23, 1996, 110 Stat. 2521.)

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–201 added subsec. (g).

§ 12525. Benefit amounts

(a) BASIC BENEFIT.—The basic benefit for an insured member under the insurance program is $1,000 per month (as adjusted under subsection (d)).

(b) REDUCED AND ENHANCED BENEFITS.—Under the regulations prescribed by the Secretary, a person enrolled for coverage under the insurance program may elect—

(1) a reduced coverage benefit equal to one-half the amount of the basic benefit; or

(2) an enhanced benefit in the amount of $1,500, $2,000, $2,500, $3,000, $3,500, $4,000, $4,500, or $5,000 per month (as adjusted under subsection (d)).

(c) AMOUNT FOR PARTIAL MONTH.—The amount of insurance payable to an insured member for any period of covered service that is less than one month shall be determined by multiplying 1/30 of the monthly benefit rate for the member by the number of days of the covered service served by the member during such period.

(d) ADJUSTMENT OF AMOUNTS.—(1) The Secretary shall determine annually the effect of inflation on benefits and shall adjust the amounts set forth in subsections (a) and (b)(2) to maintain the constant dollar value of the benefit.

(2) If the amount of a benefit as adjusted under paragraph (1) is not evenly divisible by $10, the amount shall be rounded to the nearest multiple of $10, except that an amount evenly divisible by $5 but not by $10 shall be rounded to the next lower amount that is evenly divisible by $10.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12526. Premiums

(a) ESTABLISHMENT OF RATES.—(1) The Secretary, in consultation with the Board of Actuaries, shall prescribe the premium rates for insurance under the insurance program.

(2) The Secretary shall prescribe a fixed premium rate for each $1,000 of monthly insurance benefit. The premium amount shall be equal to the share of the cost attributable to insuring the member and shall be the same for all members of the Ready Reserve who are insured under the insurance program for the same benefit amount. The Secretary shall prescribe the rate on the basis of the best available estimate of risk and financial exposure, levels of subscription by members, and other relevant factors.

(b) LEVEL PREMIUMS.—The premium rate prescribed for the first year of insurance coverage of an insured member shall be continued without change for subsequent years of insurance coverage, except that the Secretary, after consultation with the Board of Actuaries, may adjust the premium rate in order to fund inflation-adjusted benefit increases on an actuarially sound basis.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12527. Payment of premiums

(a) METHODS OF PAYMENT.—(1) The monthly premium for coverage of a member of the Selected Reserve under the insurance program shall be deducted and withheld from the insured member's pay for each month.

(2) The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe regulations which specify the procedures for payment of premiums by members of the Individual Ready Reserve and other members who do not receive pay on a monthly basis.

(b) ADVANCE PAY FOR PREMIUM.—The Secretary concerned may advance to an insured member the amount equal to the first insurance premium payment due under this chapter. The advance may be paid out of appropriations for military pay. An advance to a member shall be collected from the member either by deducting and withholding the amount from basic pay payable for the member or by collecting it from the member directly. No disbursing or certifying officer shall be responsible for any loss resulting from an advance under this subsection.

(c) PREMIUMS TO BE DEPOSITED IN FUND.—Premium amounts deducted and withheld from the pay of insured members and premium amounts paid directly to the Secretary shall be credited monthly to the Fund.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 302; amended Pub. L. 104–201, div. A, title V, § 547, Sept. 23, 1996, 110 Stat. 2524; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (a)(1). Pub. L. 104–201, § 547(1), inserted ''of the Selected Reserve'' after ''a member''.

Subsec. (a)(2). Pub. L. 104–201, § 547(2), added par. (2) and struck out former par. (2) which read as follows: ''An insured member who does not receive pay on a monthly basis shall pay the Secretary directly the premium amount applicable for the level of benefits for which the member is insured.''

EFFECTIVE DATE OF 2002 AMENDMENT

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

§ 12528. Reserve Mobilization Income Insurance Fund

(a) ESTABLISHMENT.—There is established on the books of the Treasury a fund to be known as the ''Reserve Mobilization Income Insurance Fund'', which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance the liabilities of the insurance program on an actuarially sound basis.

(b) ASSETS OF FUND.—There shall be deposited into the Fund the following:

(1) Premiums paid under section 12527 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(c) AVAILABILITY.—Amounts in the Fund shall be available for paying insurance benefits under the insurance program.

(d) INVESTMENT OF ASSETS OF FUND.—The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current liabilities. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to the Fund.

(e) ANNUAL ACCOUNTING.—At the beginning of each fiscal year, the Secretary, in consultation with the Board of Actuaries and the Secretary of the Treasury, shall determine the following:

(1) The projected amount of the premiums to be collected, investment earnings to be received, and any transfers or appropriations to be made for the Fund for that fiscal year.

(2) The amount for that fiscal year of any cumulative unfunded liability (including any negative amount or any gain to the Fund) resulting from payments of benefits.

(3) The amount for that fiscal year (including any negative amount) of any cumulative actuarial gain or loss to the Fund.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 302.)

§ 12529. Board of Actuaries

(a) ACTUARIAL RESPONSIBILITY.—The Board of Actuaries shall have the actuarial responsibility for the insurance program.

(b) VALUATIONS AND PREMIUM RECOMMENDATIONS.—The Board of Actuaries shall carry out periodic actuarial valuations of the benefits under the insurance program and determine a premium rate methodology for the Secretary to use in setting premium rates for the insurance program. The Board shall conduct the first valuation and determine a premium rate methodology not later than six months after the insurance program is established.

(c) EFFECTS OF CHANGED BENEFITS.—If at the time of any actuarial valuation under subsection (b) there has been a change in benefits under the insurance program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Board of Actuaries shall determine a premium rate methodology, and recommend to the Secretary a premium schedule, for the liq-

uidation of any liability (or actuarial gain to the Fund) resulting from such change and any previous such changes so that the present value of the sum of the scheduled premium payments (or reduction in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such benefits.

(d) ACTUARIAL GAINS OR LOSSES.—If at the time of any such valuation the Board of Actuaries determines that there has been an actuarial gain or loss to the Fund as a result of changes in actuarial assumptions since the last valuation or as a result of any differences, between actual and expected experience since the last valuation, the Board shall recommend to the Secretary a premium rate schedule for the amortization of the cumulative gain or loss to the Fund resulting from such changes in assumptions and any previous such changes in assumptions or from the differences in actual and expected experience, respectively, through an increase or decrease in the payments that would otherwise be made to the Fund.

(e) INSUFFICIENT ASSETS.—If at any time liabilities of the Fund exceed assets of the Fund as a result of members of the Ready Reserve being ordered to active duty as described in section 12521(2) of this title, and funds are unavailable to pay benefits completely, the Secretary shall request the President to submit to Congress a request for a special appropriation to cover the unfunded liability. If appropriations are not made to cover an unfunded liability in any fiscal year, the Secretary shall reduce the amount of the benefits paid under the insurance program to a total amount that does not exceed the assets of the Fund expected to accrue by the end of such fiscal year. Benefits that cannot be paid because of such a reduction shall be deferred and may be paid only after and to the extent that additional funds become available.

(f) DEFINITION OF PRESENT VALUE.—The Board of Actuaries shall define the term ''present value'' for purposes of this subsection.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 303.)

§ 12530. Payment of benefits

(a) COMMENCEMENT OF PAYMENT.—An insured member who serves in excess of 30 days of covered service shall be paid the amount to which such member is entitled on a monthly basis beginning not later than one month after the 30th day of covered service.

(b) METHOD OF PAYMENT.—The Secretary shall prescribe in the regulations the manner in which payments shall be made to the member or to a person designated in accordance with subsection (c).

(c) DESIGNATED RECIPIENTS.—(1) A member may designate in writing another person (including a spouse, parent, or other person with an insurable interest, as determined in accordance with the regulations prescribed by the Secretary) to receive payments of insurance benefits under the insurance program.

(2) A member may direct that payments of insurance benefits for a person designated under paragraph (1) be deposited with a bank or other financial institution to the credit of the designated person.

(d) RECIPIENTS IN EVENT OF DEATH OF INSURED MEMBER.—Any insurance payable under the insurance program on account of a deceased member's period of covered service shall be paid, upon the establishment of a valid claim, to the beneficiary or beneficiaries which the deceased member designated in writing. If no such designation has been made, the amount shall be payable in accordance with the laws of the State of the member's domicile.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12531. Purchase of insurance

(a) PURCHASE AUTHORIZED.—The Secretary may, instead of or in addition to underwriting the insurance program through the Fund, purchase from one or more insurance companies a policy or policies of group insurance in order to provide the benefits required under this chapter. The Secretary may waive any requirement for full and open competition in order to purchase an insurance policy under this subsection.

(b) ELIGIBLE INSURERS.—In order to be eligible to sell insurance to the Secretary for purposes of subsection (a), an insurance company shall—

(1) be licensed to issue insurance in each of the 50 States and in the District of Columbia; and

(2) as of the most recent December 31 for which information is available to the Secretary, have in effect at least one percent of the total amount of insurance that all such insurance companies have in effect in the United States.

(c) ADMINISTRATIVE PROVISIONS.—(1) An insurance company that issues a policy for purposes of subsection (a) shall establish an administrative office at a place and under a name designated by the Secretary.

(2) For the purposes of carrying out this chapter, the Secretary may use the facilities and services of any insurance company issuing any policy for purposes of subsection (a), may designate one such company as the representative of the other companies for such purposes, and may contract to pay a reasonable fee to the designated company for its services.

(d) REINSURANCE.—The Secretary shall arrange with each insurance company issuing any policy for purposes of subsection (a) to reinsure, under conditions approved by the Secretary, portions of the total amount of the insurance under such policy or policies with such other insurance companies (which meet qualifying criteria prescribed by the Secretary) as may elect to participate in such reinsurance.

(e) TERMINATION.—The Secretary may at any time terminate any policy purchased under this section.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12532. Termination for nonpayment of premiums; forfeiture

(a) TERMINATION FOR NONPAYMENT.—The coverage of a member under the insurance program shall terminate without prior notice upon a failure of the member to make required monthly

payments of premiums for two consecutive months. The Secretary may provide in the regulations for reinstatement of insurance coverage terminated under this subsection.

(b) FORFEITURE.—Any person convicted of mutiny, treason, spying, or desertion, or who refuses to perform service in the armed forces or refuses to wear the uniform of any of the armed forces shall forfeit all rights to insurance under this chapter.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 305.)

§ 12533. Termination of program

(a) IN GENERAL.—The Secretary shall terminate the insurance program in accordance with this section.

(b) TERMINATION OF NEW ENROLLMENTS.—The Secretary may not enroll a member of the Ready Reserve for coverage under the insurance program after November 18, 1997.

(c) TERMINATION OF COVERAGE.—(1) The enrollment under the insurance program of insured members other than insured members described in paragraph (2) is terminated as of November 18, 1997. The enrollment of an insured member described in paragraph (2) is terminated as of the date of the termination of the period of covered service of that member described in that paragraph.

(2) An insured member described in this paragraph is an insured member who on November 18, 1997, is serving on covered service for a period of service, or has been issued an order directing the performance of covered service, that satisfies or would satisfy the entitlement-to-benefits provisions of this chapter.

(d) TERMINATION OF PAYMENT OF BENEFITS.—The Secretary may not make any benefit payment under the insurance program after November 18, 1997, other than to an insured member who on that date (1) is serving on an order to covered service, (2) has been issued an order directing performance of covered service, or (3) has served on covered service before that date for which benefits under the program have not been paid to the member.

(e) TERMINATION OF INSURANCE FUND.—The Secretary shall close the Fund not later than 60 days after the date on which the last benefit payment from the Fund is made. Any amount remaining in the Fund when closed shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105–85, div. A, title V, § 512(a), Nov. 18, 1997, 111 Stat. 1729; amended Pub. L. 107–107, div. A, title X, § 1048(c)(15), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsecs. (b), (c)(1). Pub. L. 107–107, § 1048(c)(15)(A), substituted ''November 18, 1997.'' for ''the date of the enactment of this section.''

Subsecs. (c)(2), (d). Pub. L. 107–107, § 1048(c)(15)(B), substituted ''November 18, 1997,'' for ''the date of the enactment of this section''.

CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[12551. Repealed.]
12552. Funeral honors functions at funerals for veterans.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 515(b), Dec. 2, 2002, 116 Stat. 2540, struck out item 12551 ''Prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions''.

1999—Pub. L. 106–65, div. A, title V, § 578(k)(2)(C), Oct. 5, 1999, 113 Stat. 631, substituted ''honors functions at funerals for veterans'' for ''honor guard functions: prohibition of treatment as drill or training'' in item 12552.

1998—Pub. L. 105–261, div. A, title V, § 567(c)(2), Oct. 17, 1998, 112 Stat. 2031, added item 12552.

1997—Pub. L. 105–85, div. A, title V, § 515(a), Nov. 18, 1997, 111 Stat. 1732, substituted table of sections consisting of item 12551 for ''[No present sections]''.

[§ 12551. Repealed. Pub. L. 107–314, div. A, title V, § 515(a), Dec. 2, 2002, 116 Stat. 2539]

Section, added Pub. L. 105–85, div. A, title V, § 515(a), Nov. 18, 1997, 111 Stat. 1732, related to prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions.

§ 12552. Funeral honors functions at funerals for veterans

Performance by a Reserve of funeral honors functions at the funeral of a veteran (as defined in section 1491(h) of this title) may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 12503 of this title.

(Added Pub. L. 105–261, div. A, title V, § 567(c)(1), Oct. 17, 1998, 112 Stat. 2031; amended Pub. L. 106–65, div. A, title V, § 578(g)(4), Oct. 5, 1999, 113 Stat. 628; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(21)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

AMENDMENTS

2000—Pub. L. 106–398 inserted period at end.

1999—Pub. L. 106–65 substituted ''honors functions at funerals for veterans'' for ''honor guard functions: prohibition of treatment as drill or training'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Performance by a Reserve of honor guard functions at the funeral of a veteran may not be considered to be a period of drill or training otherwise required.''

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.
12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates.
12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.
12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title VI, § 663(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168, added item 12604.

1999—Pub. L. 106–65, div. A, title VI, § 652(a)(2), Oct. 5, 1999, 113 Stat. 665, added item 12605.

1998—Pub. L. 105–261, div. A, title VI, § 635(b), Oct. 17, 1998, 112 Stat. 2045, added item 12603.

§ 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).

§ 12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates

(a) FEDERAL SUPPLY SCHEDULE TRAVEL.—Commercial travel under Federal supply schedules is authorized for the travel of a Reserve to the location of inactive duty training to be performed by the Reserve and from that location upon completion of the training.

(b) REGULATIONS.—The Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions for travel under the authority of subsection (a) as the Secretary considers appropriate. The regulations shall include policies and procedures for preventing abuses of that travel authority.

(c) REIMBURSEMENT NOT AUTHORIZED.—A Reserve is not entitled to Government reimbursement for the cost of travel authorized under subsection (a).

(d) TREATMENT OF TRANSPORTATION AS USE BY MILITARY DEPARTMENTS.—For the purposes of section 501 of title 40, travel authorized under subsection (a) shall be treated as transportation for the use of a military department.

(Added Pub. L. 105–261, div. A, title VI, § 635(a), Oct. 17, 1998, 112 Stat. 2044; amended Pub. L. 107–217, § 3(b)(41), Aug. 21, 2002, 116 Stat. 1298.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–217 substituted ''section 501 of title 40'' for ''section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a))''.

§ 12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training

(a) AUTHORITY FOR BILLETING ON SAME BASIS AS ACTIVE DUTY MEMBERS TRAVELING UNDER ORDERS.—The Secretary of Defense shall prescribe regulations authorizing a Reserve traveling to inactive-duty training at a location more than 50 miles from that Reserve's residence to be eligible for billeting in Department of Defense facilities on the same basis and to the same extent as a member of the armed forces on active duty who is traveling under orders away from the member's permanent duty station.

(b) PROOF OF REASON FOR TRAVEL.—The Secretary shall include in the regulations the means for confirming a Reserve's eligibility for billeting under subsection (a).

(Added Pub. L. 106–398, § 1 [[div. A], title VI, § 663(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168.)

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VI, § 663(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168, provided that: ''Section 12604 of title 10, United States Code, as added by subsection (a), shall apply with respect to periods of inactive-duty training beginning more than 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

§ 12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay

(a) PRESENTATION OF FLAG.—Upon the transfer from an active status or discharge of a Reserve who has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the Secretary concerned shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 106–65, div. A, title VI, § 652(a)(1), Oct. 5, 1999, 113 Stat. 664.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VI, § 652(d), Oct. 5, 1999, 113 Stat. 665, provided that: ''Section 12605 of title 10, United States Code (as added by subsection (a)), section 213 of the Public Health Service Act [42 U.S.C. 214] (as added by subsection (b)), and section 25 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 [33 U.S.C. 853v] (as added by subsection (c)) shall apply with respect to releases from service described in those sections on or after October 1, 1999.''

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.
12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

§ 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 Pub. L. 103–337, div. A, title XVI, § 1662(h)(2), (4)(A), Oct. 5, 1994, 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.

§ 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 applicable 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, 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; Pub. L. 109–163, div. A, title X, § 1057(a)(2), Jan. 6, 2006, 119 Stat. 3440.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1002(a)	50:1192(b) (1st sentence, less 11th through 29th words). 50:1181(4).	Sept. 3, 1954, ch. 1257, §§ 102(1) (as applicable to § 202(b)), 102(4), 202(b), 68 Stat. 1149, 1150.
1002(b)	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

2006—Subsec. (c). Pub. L. 109–163 struck out ''and Territories'' after ''States''.

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.

§ 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; Pub. L. 96–513, title V, § 501(4), Dec. 12, 1980, 94 Stat. 2907; Pub. L. 97–22, § 2(c), July 10, 1981, 95 Stat. 124; renumbered § 12643, Pub. L. 103–337, div. A, title XVI, § 1662(h)(2), Oct. 5, 1994, 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; Pub. L. 86–603, § 1(1), July 7, 1960, 74 Stat. 357; Pub. L. 103–160, div. A, title V, § 519, Nov. 30, 1993, 107 Stat. 1651; renumbered § 12644 and amended Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(4), 1662(h)(2), (4)(B), Oct. 5, 1994, 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, §§ 225, 226, 66 Stat. 488.
1004(b)	50:950 (last sentence).	
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.

§ 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 573, 1407, 1409, or 1411 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;

(2) an officer on the active-duty list or a reserve active-status 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;

(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.

(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; Pub. L. 104–106, div. A, title XV, § 1501(a)(4), Feb. 10, 1996, 110 Stat. 495; Pub. L. 104–201, div. A, title V, § 544(b), Sept. 23, 1996, 110 Stat. 2523.)

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

1996—Subsec. (b)(2). Pub. L. 104–201 inserted ''or a reserve active-status list'' after ''active-duty list''.

Subsec. (b)(3), (4). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1627. See 1994 Amendment note below.

1994—Pub. L. 103–337, § 1662(h)(2), renumbered section 1005 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1675(d)(2), substituted ''573, 1407, 1409, or 1411'' for ''337, 361, 363, 573, 837, 861, or 863''.

Subsec. (b)(3), (4). Pub. L. 103–337, § 1627, as amended by Pub. L. 104–106, added pars. (3) and (4).

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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.

§ 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 573, 1407, or 1409 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 573, 1407, or 1409 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)(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.

(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.)

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), 503(c), 68 Stat. 1149, 1151, 1155, 1173; June 30, 1955, ch. 247, §1(b), 69 Stat. 218.
1006(b)	50:1195(b) (less last 30 words).	
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)).

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)(B), substituted ''573, 1407, or 1409'' for ''337, 361, 363, 573, 837, 861, or 863''.

Pub. L. 103–337, §1675(d)(3)(A), substituted ''12732'' for ''1332'' wherever appearing.

Subsec. (e). Pub. L. 103–337, §1675(d)(3)(C), added subsec. (e) and struck out former subsec. (e) which read as follows: ''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.''

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 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.

§ 12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers

Notwithstanding chapters 573, 1407, and 1409 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.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1007	50:1181(1) (as applicable to 50:1202). 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, § 1675(d)(4), substituted ''573, 1407, and 1409'' for ''337, 363, 573, 837, and 863''.

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.
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.
12687. Reserves under confinement by sentence of court-martial: separation after six months confinement.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title V, § 563(a)(2)(B), Feb. 10, 1996, 110 Stat. 325, added item 12687.

§ 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.

''(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. 104–208, div. A, title I, § 101(b) [title VIII, § 8050], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99, provided that: ''During the current fiscal year and hereafter, annual payments granted under the provisions of section 4416 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2714) [set out

below] shall be made from appropriations in this Act [Pub. L. 104–208] which are available for the pay of reserve component personnel.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8061, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8073, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103–139, title VIII, § 8087, Nov. 11, 1993, 107 Stat. 1459.

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; Pub. L. 104–106, div. A, title XV, § 1501(d)(3), Feb. 10, 1996, 110 Stat. 500; Pub. L. 105–261, div. A, title V, § 561(*l*), (m), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(*l*), (m)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–107, div. A, title X, § 1048(h)(2), Dec. 28, 2001, 115 Stat. 1229, 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 December 31, 2001.

''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.

''(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 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 unreduced 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 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 of title 10, United States Code, or after that date and before the end of the force reduction transition period, such member completes 20 years of service computed under that section or section 12732;

''(2) the member satisfies the requirements of paragraphs (3) and (4) of section 1331(a) or 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 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 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 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 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 ju-

risdiction 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].'']

§ 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 to any of the following:

(1) A separation under section 12684, 14901, or 14907 of this title.

(2) A dismissal under section 1161(a) of this title.

(3) A transfer under section 12213, 12214, 14514, or 14515 of this title.

(4) A separation of an officer who is in an inactive status in the Standby Reserve and who is not qualified for transfer to the Retired Reserve or is qualified for transfer to the Retired Reserve and does not apply for such a transfer.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997; amended Pub. L. 105–85, div. A, title V, § 516, Nov. 18, 1997, 111 Stat. 1733; Pub. L. 105–261, div. A, title X, § 1069(a)(8), Oct. 17, 1998, 112 Stat. 2136.)

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).

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105–261 substituted a period for ''; or'' at end.

1997—Subsec. (b). Pub. L. 105–85, § 516(a)(1), substituted ''apply to any of the following:'' for ''apply—'' in introductory provisions.

Subsec. (b)(1). Pub. L. 105–85, § 516(b)(1), (2), substituted ''A'' for ''to a'' and ''title.'' for ''title;''.

Subsec. (b)(2). Pub. L. 105–85, § 516(b)(3), which directed substitution of a period for ''; and'' at end of par. (2), could not be executed because ''; and'' did not appear in par. (2).

Pub. L. 105–85, § 516(b)(1), substituted ''A'' for ''to a''.

Subsec. (b)(3). Pub. L. 105–85, § 516(b)(1), substituted ''A'' for ''to a''.

Subsec. (b)(4). Pub. L. 105–85, § 516(a)(2), added par. (4).

§ 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;

(2) who may be separated under section 12687 of this title by reason of a sentence to confinement adjudged by a court-martial; or

(3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998; amended Pub. L. 104–106, div. A, title V, § 563(b)(2), Feb. 10, 1996, 110 Stat. 325.)

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).

AMENDMENTS

1996—Pub. L. 104–106 struck out ''or'' at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

§ 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

(a) LIMITATION.—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 (other than the retirement system under chapter 1223 of this title), may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

(b) WAIVER.—With respect to a member of a reserve component who is to be ordered to active duty (other than for training) under section 12301 of this title pursuant to an order to active duty that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require, as a condition of such order to active duty, that the member waive the applicability of subsection (a) to the member for the period of active duty covered by that order. In carrying out this subsection, the Secretary concerned may require that a waiver under the preceding sentence be executed before the period of active duty begins.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998; amended Pub. L. 104–201, div. A, title V, § 533, Sept. 23, 1996, 110 Stat. 2520; Pub. L. 108–375, div. A, title V, § 522, Oct. 28, 2004, 118 Stat. 1888.)

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).

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 inserted ''(other than the retirement system under chapter 1223 of this title)'' after ''retirement system''.

1996—Pub. L. 104–201 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 12687. Reserves under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a Reserve sentenced by a court-martial to a period of confinement for more than six months may be separated from that Reserve's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the Reserve has served in confinement for a period of six months.

(Added Pub. L. 104–106, div. A, title V, § 563(a)(2)(A), Feb. 10, 1996, 110 Stat. 325.)

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
12731. Age and service requirements.
12731a. Temporary special retirement qualification authority.
12731b. Special rule for members with physical disabilities not incurred in line of duty.
12732. Entitlement to retired pay: computation of years of service.
12733. Computation of retired pay: computation of years of service.
12734. Time not creditable toward years of service.
12735. Inactive status list.
12736. Service credited for retired pay benefits not excluded for other benefits.
12737. Limitation on active duty.
12738. Limitations on revocation of retired pay.
12739. Computation of retired pay.
12740. Eligibility: denial upon certain punitive discharges or dismissals.
12741. Retirement from active reserve service performed after regular retirement.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title VI, § 653(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, added item 12741.

1999—Pub. L. 106–65, div. A, title VI, § 653(b)(2), Oct. 5, 1999, 113 Stat. 667, added item 12731b.

1996—Pub. L. 104–106, div. A, title VI, § 632(a)(2), Feb. 10, 1996, 110 Stat. 365, added item 12740.

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.

§ 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) in the case of a person who completed the service requirements of paragraph (2) before April 25, 2005, performed the last six 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, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight; 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 Homeland Security, 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.

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, § 1331; Pub. L. 85–704, Aug. 21, 1958, 72 Stat. 702; Pub. L. 85–861, § 33(a)(8), Sept. 2, 1958, 72 Stat. 1564; Pub. L. 89–652, § 1, Oct. 14, 1966, 80 Stat. 902; Pub. L. 90–485, § 2, Aug. 13, 1968, 82 Stat. 754; Pub. L. 95–397, title II, § 206, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96–513, title V, § 511(47), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, § 924(a), Sept. 24, 1983, 97 Stat. 644; Pub. L. 101–189, div. A, title XIV, § 1404(b)(1), Nov. 29, 1989, 103 Stat. 1586; renumbered § 12731 and amended Pub. L. 103–337, div. A, title VI, § 636, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2790, 2999; Pub. L. 104–106, div. A, title XV, § 1501(b)(20), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–261, div. A, title V, § 561(n)(1), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VI, § 631(a), (b), Dec. 2, 2002, 116 Stat. 2571, 2572; Pub. L. 108–375, div. A, title V, § 501(f), Oct. 28, 2004, 118 Stat. 1874; Pub. L. 109–364, div. A, title X, § 1071(a)(40), Oct. 17, 2006, 120 Stat. 2400.)

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). 34:440*l* (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.

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–364 substituted ''before April 25, 2005'' for ''before the end of the 180-day period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005''.

2004—Subsec. (a)(3). Pub. L. 108–375 inserted after par. (3) designation ''in the case of a person who completed

the service requirements of paragraph (2) before the end of the 180-day period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005,''.

2002—Subsec. (a)(3). Pub. L. 107–314, § 631(a), substituted ''six years'' for ''eight years'' and inserted before semicolon '', except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight''.

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

Subsec. (f). Pub. L. 107–314, § 631(b), struck out 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 October 5, 1994, and ending on December 31, 2001, the provisions of subsection (a)(3) shall be applied by substituting 'the last six years' for 'the last eight years'.''

2000—Subsec. (f). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (f). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1996—Subsec. (f). Pub. L. 104–106 substituted ''October 5, 1994,'' for ''the date of the enactment of this subsection''.

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 2004 AMENDMENT

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

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title VI, § 631(c), Dec. 2, 2002, 116 Stat. 2572, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2002. No benefit shall accrue to any person for any period before that date by reason of the enactment of those amendments.''

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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 subchapter 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.

§ 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 the end of the period described in subsection (b), 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 December 31, 2001.

(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 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 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 Homeland Security 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; Pub. L. 104–106, div. A, title XV, § 1501(b)(21), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–261, div. A, title V, § 561(n)(2), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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

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

2000—Subsec. (a)(1)(B). Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(2)(A)], substituted ''the end of the period described in subsection (b)'' for ''October 1, 2001''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(2)(B)], substituted ''December 31, 2001'' for ''October 1, 2001''.

1998—Subsec. (a)(1)(B), (b). Pub. L. 105–261 substituted ''October 1, 2001'' for ''October 1, 1999''.

1996—Subsec. (c)(3). Pub. L. 104–106 inserted comma after ''Defense Conversion''.

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 2002 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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.

§ 12731b. Special rule for members with physical disabilities not incurred in line of duty

(a) In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member 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 has completed at least 15, and less than 20, years of service computed under section 12732 of this title.

(b) Notification under subsection (a) may not be made if—

(1) the disability was 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

(2) the disability was incurred during a period of unauthorized absence.

(Added Pub. L. 106–65, div. A, title VI, § 653(b)(1), Oct. 5, 1999, 113 Stat. 666.)

§ 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 Navy 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, 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.

(D) Points credited for the year under section 2126(b) of this title.

(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or

section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.

For the purpose of clauses (A), (B), (C), (D), and (E), 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 Navy 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; Pub. L. 85–861, § 33(a)(9), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 86–197, § 1(1)–(3), Aug. 25, 1959, 73 Stat. 425; Pub. L. 88–636, § 1, Oct. 8, 1964, 78 Stat. 1034; Pub. L. 93–545, § 1, Dec. 26, 1974, 88 Stat. 1741; Pub. L. 96–513, title V, § 511(48), Dec. 12, 1980, 94 Stat. 2924; renumbered § 12732 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3000; Pub. L. 104–201, div. A, title V, § 543(b)(1), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 106–65, div. A, title V, § 578(h)(1), Oct. 5, 1999, 113 Stat. 628; Pub. L. 109–163, div. A, title V, § 515(b)(1)(MM), Jan. 6, 2006, 119 Stat. 3234.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

2006—Subsecs. (a)(1)(E), (b)(2). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

1999—Subsec. (a)(2). Pub. L. 106–65 added subpar. (E) and substituted '', (D), and (E)'' for '', and (D)'' in concluding provisions.

1996—Subsec. (a)(2). Pub. L. 104–201 added cl. (D) and substituted ''(C), and (D)'' for ''and (C)'' in concluding provisions.

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].''

TRACKING SYSTEM AND RECOMMENDATIONS TO CONGRESS RELATING TO AWARD OF RETIREMENT POINTS

Section 531(b), (c) of Pub. L. 104–201 provided that:

''(b) TRACKING SYSTEM FOR AWARD OF RETIREMENT POINTS.—To better enable the Secretary of Defense and Congress to assess the cost and the effect on readiness of the amendment made by subsection (a) [amending section 12733 of this title] and of other potential changes to the Reserve retirement system under chapter 1223 of title 10, United States Code, the Secretary of Defense shall require the Secretary of each military department to implement a system to monitor the award of retirement points for purposes of that chapter by categories in accordance with the recommendation set forth in the August 1988 report of the Sixth Quadrennial Review of Military Compensation.

''(c) RECOMMENDATIONS TO CONGRESS.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act [Sept. 23, 1996], the recommendations of the Secretary with regard to the adoption of the following Reserve retirement initiatives recommended in the August 1988 report of the Sixth Quadrennial Review of Military Compensation:

''(1) Elimination of membership points under subparagraph (C) of section 12732(a)(2) of title 10, United States Code, in conjunction with a decrease from 50 to 35 in the number of points required for a satisfactory year under that section.

''(2) Limitation to 60 in any year on the number of points that may be credited under subparagraph (B) of section 12732(a)(2) of such title at two points per day.

''(3) Limitation to 360 in any year on the total number of retirement points countable for purposes of section 12733 of such title.''

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 individual 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.''

§ 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), (C), or (D) of section 12732(a)(2) of this title, but not more than—

(A) 60 days in any one year of service before the year of service that includes September 23, 1996;

(B) 75 days in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes October 30, 2000; and

(C) 90 days in the year of service that includes October 30, 2000, and in any subsequent year of service.

(4) One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title.

(5) 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; Pub. L. 85–861, § 33(a)(10), Sept. 2, 1958, 72 Stat. 1565; renumbered § 12733 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3002; Pub. L. 104–201, div. A, title V, §§ 531(a), 543(b)(2), Sept. 23, 1996, 110 Stat. 2517, 2522; Pub. L. 105–85, div. A, title X, § 1073(a)(67), (c)(4), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 106–65, div. A, title V, § 578(h)(2), Oct. 5, 1999, 113 Stat. 628; Pub. L. 106–398, § 1 [[div. A], title VI, § 652], Oct. 30, 2000, 114 Stat. 1654, 1654A–163; Pub. L. 107–107, div. A, title X, § 1048(c)(16), Dec. 28, 2001, 115 Stat. 1227.)

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

2001—Par. (3)(B). Pub. L. 107–107, § 1048(c)(16)(A), substituted ''October 30, 2000'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

Par. (3)(C). Pub. L. 107–107, § 1048(c)(16)(B), substituted ''October 30, 2000,'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

2000—Par. (3). Pub. L. 106–398 substituted ''but not more than—'' and subpars. (A) to (C) for ''but not more than 60 days in any one year of service before the year of service that includes September 23, 1996, and not more than 75 days in any subsequent year of service.''

1999—Pars. (4), (5). Pub. L. 106–65 added par. (4) and redesignated former par. (4) as (5).

1997—Par. (3). Pub. L. 105–85, § 1073(c)(4), made technical correction to directory language of Pub. L. 104–201, § 531(a). See 1996 Amendment note below.

Pub. L. 105–85, § 1073(a)(67), inserted a comma after ''(B)'' and substituted ''that includes September 23, 1996,'' for ''in which the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 occurs''.

1996—Par. (3). Pub. L. 104–201, § 543(b)(2), substituted ''(C), or (D)'' for ''or (C)''.

Pub. L. 104–201, § 531(a), as amended by Pub. L. 105–85, § 1073(c)(4), inserted before period at end ''of service before the year of service in which the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 occurs and not more than 75 days in any subsequent year of service''.

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 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

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

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.

§ 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; Pub. L. 87–651, title I, § 108, Sept. 7, 1962, 76 Stat. 509; renumbered § 12734 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 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). 34:440*o* (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 34:440*o* (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.''

§ 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 Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1335(a)	10:1036g (1st sentence). 34:440*o* (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). 34:440*o* (2d sentence, less last 41 words).	
1335(c)	10:1036g (less 1st and 2d sentences). 34:440*o* (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), 10:1036*g* (last 32 words of last sentence) and 34:440*o* (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.

§ 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 Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1336	10:1036d (less 1st sentence). 34:440*l* (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 Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 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) If a person entitled to retired pay under this chapter has been credited by the Secretary concerned with extraordinary heroism in the line of duty and if the highest grade held satisfactorily by that person at any time in the armed forces is an enlisted grade, the person's retired pay shall be increased by 10 percent of the amount determined under subsection (a). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(c)(1) Except as provided in paragraph (2), the total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed 75 percent of the retired pay base upon which the computation is based.

(2) In the case of a person who retires after December 31, 2006, with more than 30 years of service credited to that person under section 12733 of this title, the total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed the sum of—

(A) 75 percent of the retired pay base upon which the computation is based; and

(B) the product of—

(i) the retired pay base upon which the computation is based; and

(ii) 2½ percent of the years of service credited to that person under section 12733 of this title, for service under conditions authorized for purposes of this paragraph during a period designated by the Secretary of Defense for purposes of this paragraph.

(d) 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; amended Pub. L. 107–314, div. A, title VI, § 632(a), (b), Dec. 2, 2002, 116 Stat. 2572; Pub. L. 109–364, div. A, title VI, § 642(b), Oct. 17, 2006, 120 Stat. 2259.)

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).

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–364 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

2002—Subsec. (b). Pub. L. 107–314, § 632(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–314, § 632(a)(1), (b), redesignated subsec. (b) as (c) and substituted ''total amount of the monthly retired pay computed under subsections (a) and (b)'' for ''amount computed under subsection (a)''. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107–314, § 632(a)(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VI, § 632(c), Dec. 2, 2002, 116 Stat. 2572, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to retired pay for months beginning on or after that date.''

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.

§ 12740. Eligibility: denial upon certain punitive discharges or dismissals

A person who—

(1) is convicted of an offense under the Uniform Code of Military Justice (chapter 47 of this title) and whose sentence includes death; or

(2) is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal,

is not eligible for retired pay under this chapter.

(Added Pub. L. 104–106, div. A, title VI, § 632(a)(1), Feb. 10, 1996, 110 Stat. 365.)

EFFECTIVE DATE

Section 632(b) of Pub. L. 104–106 provided that: ''Section 12740 of title 10, United States Code, as added by subsection (a), shall apply with respect to court-martial sentences adjudged after the date of the enactment of this Act [Feb. 10, 1996].''

§ 12741. Retirement from active reserve service performed after regular retirement

(a) ELECTION OF RESERVE RETIRED PAY.—A person who, after becoming entitled to retired or retainer pay under chapter 65, 367, 571, or 867 of this title, serves in an active status in a reserve component is entitled to retired pay under this chapter if—

(1) the person would, but for paragraphs (3) and (4) of section 12731(a) of this title, otherwise be entitled to retired pay under this chapter;

(2) the person elects under this section to receive retired pay under this chapter; and

(3) the person's service in an active status after having become entitled to retired or retainer pay under that chapter is determined by the Secretary concerned to have been satisfactory.

(b) ACTIONS TO EFFECTUATE ELECTION.—As of the effective date of an election made by a person under subsection (a), the Secretary concerned shall—

(1) terminate the person's entitlement to retired or retainer pay under the applicable chapter of this title referred to in subsection (a); and

(2) in the case of a reserve commissioned officer, transfer the officer to the Retired Reserve.

(c) TIME AND FORM OF ELECTION.—An election under subsection (a) shall be made within such time and in such form as the Secretary concerned requires.

(d) EFFECTIVE DATE OF ELECTION.—An election made by a person under subsection (a) shall be effective—

(1) except as provided in paragraph (2)(B), as of the date on which the person attains 60 years of age, if the Secretary concerned receives the election in accordance with this section within 180 days after that date; or

(2) on the first day of the first month that begins after the date on which the Secretary concerned receives the election in accordance with this section, if—

(A) the date of the receipt of the election is more than 180 days after the date on which the person attains 60 years of age; or

(B) the person retires from service in an active status within that 180-day period.

(Added Pub. L. 106–398, § 1 [[div. A], title VI, § 653(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–164; amended Pub. L. 107–107, div. A, title X, § 1048(a)(31), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 109–364, div. A, title X, § 1071(a)(41), Oct. 17, 2006, 120 Stat. 2400.)

AMENDMENTS

2006—Subsecs. (c), (d). Pub. L. 109–364 substituted ''subsection (a)'' for ''subsection (b)''.

2001—Subsec. (a)(2). Pub. L. 107–107 substituted ''receive'' for ''received''.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VI, § 653(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, provided that: ''Section 12741 of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 30, 2000] and shall apply with respect to retired pay payable for months beginning on or after that effective date.''

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.

§ 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.

§ 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).

§ 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(NN), Jan. 6, 2006, 119 Stat. 3234.)

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).

AMENDMENTS

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

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

Chap.		Sec.
1401.	Applicability and Reserve Active-Status Lists	14001
1403.	Selection Boards	14101
1405.	Promotions	14301
1407.	Failure of Selection for Promotion and Involuntary Separation	14501
1409.	Continuation of Officers on the Reserve Active-Status List and Selective Early Removal	14701
1411.	Additional Provisions Relating to Involuntary Separation	14901

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.
14004. Reserve active-status lists: eligibility for Reserve promotion.
14005. Competitive categories.
14006. Determination of years in grade.

§ 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

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.

''(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 Navy Reserve and the Marine Corps Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2922; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(OO), Jan. 6, 2006, 119 Stat. 3234.)

AMENDMENTS

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

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.''

§ 14003. Reserve active-status lists: 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(22), Feb. 10, 1996, 110 Stat. 497.)

AMENDMENTS

1996—Pub. L. 104–106 inserted ''lists'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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.)

§ 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.)

§ 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.)

CHAPTER 1403—SELECTION BOARDS

Sec.
14101. Convening of selection boards.
14102. Selection boards: appointment and composition.
14103. Oath of members.
14104. Nondisclosure of board proceedings.
14105. Notice of convening of promotion board.
14106. Communication with board by officers under consideration.
14107. Information furnished by the Secretary concerned to promotion boards.
14108. Recommendations by promotion boards.
14109. Reports of promotion boards: in general.
14110. Reports of promotion boards: review by Secretary.
14111. Reports of selection boards: transmittal to President.
14112. Dissemination of names of officers selected.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, § 547(d)(2), Oct. 17, 2006, 120 Stat. 2216, substituted ''Nondisclosure'' for ''Confidentiality'' in item 14104.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(23), Feb. 10, 1996, 110 Stat. 497, substituted ''promotion'' for ''selection'' in item 14105.

§ 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 Navy 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 be known as a ''vacancy promotion board''. Any other promotion board convened under this subsection shall be known as a ''mandatory promotion board''.

(3) Paragraph (1) does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade)

when the Secretary concerned recommends for promotion to the next higher grade under section 14308(b)(4) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) SELECTIVE EARLY SEPARATION 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 selective early removal from the reserve active-status list under section 14704 of this title; or

(2) for selective early retirement under section 14705 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2924; amended Pub. L. 105–85, div. A, title V, § 514(a), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 107–107, div. A, title V, § 505(b)(3), Dec. 28, 2001, 115 Stat. 1087; Pub. L. 108–136, div. A, title V, § 511(b)(1), Nov. 24, 2003, 117 Stat. 1459; Pub. L. 109–163, div. A, title V, § 515(b)(1)(PP), Jan. 6, 2006, 119 Stat. 3234.)

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

2003—Subsec. (b). Pub. L. 108–136, § 511(b)(1)(A), (D), substituted ''Selective Early Separation Boards'' for ''Continuation Boards'' in heading and struck out concluding provisions which read as follows: ''A selection board convened under this subsection shall be known as a 'continuation board'.''

Subsec. (b)(1) to (3). Pub. L. 108–136, § 511(b)(1)(B), (C), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: ''for continuation on the reserve active-status list under section 14701 of this title;''.

2001—Subsec. (a)(3). Pub. L. 107–107 added par. (3).

1997—Subsec. (a)(2). Pub. L. 105–85 struck out ''(except in the case of a board convened to consider officers as provided in section 14301(e) of this title)'' before ''be known as a 'vacancy promotion board'.''

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.

§ 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. Selection boards convened under section 14101(b) of this title 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; amended Pub. L. 108–136, div. A, title V, § 511(b)(2), Nov. 24, 2003, 117 Stat. 1459.)

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).

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136 substituted ''Selection boards convened under section 14101(b) of this title'' for ''Continuation boards''.

§ 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.)

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).

§ 14104. Nondisclosure of board proceedings

(a) NONDISCLOSURE.—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.

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

(1) are immune from legal process;

(2) may not be admitted as evidence; and

(3) may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2925; amended Pub. L. 109–364, div. A, title V, § 547(b), Oct. 17, 2006, 120 Stat. 2216.)

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).

AMENDMENTS

2006—Pub. L. 109–364 amended section catchline and text generally. Prior to amendment, text read as follows: ''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.''

EFFECTIVE DATE OF 2006 AMENDMENT

This section, as amended by Pub. L. 109–364, applicable with respect to the proceedings of all selection boards convened under section 14101 of this title, including selection boards convened before Oct. 17, 2006, see section 547(c) of Pub. L. 109–364, set out as an Effective Date note under section 613a 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.)

§ 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 day before 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; amended Pub. L. 109–163, div. A, title V, § 505(b), Jan. 6, 2006, 119 Stat. 3227.)

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).

AMENDMENTS

2006—Pub. L. 109–163 inserted ''the day before'' after ''not later than''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective Mar. 1, 2006, and applicable with respect to selection boards convened on or after that date, see section 505(c) of Pub. L. 109–163, set out as a note under section 614 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) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

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

(5) Paragraphs (2), (3), and (4) 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.

(6) Information furnished to a promotion board that is described in subparagraph (B), (C), or (D) of paragraph (2), or in paragraph (3), 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) or (3), as applicable.

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

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

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the 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 Navy 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; amended Pub. L. 109–163, div. A, title V, §§ 506(b), 515(b)(1)(QQ), Jan. 6, 2006, 119 Stat. 3227, 3234.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in section 5895 of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

AMENDMENTS

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

Subsec. (a)(4). Pub. L. 109–163, § 506(b)(1)(A), (2)(A), redesignated par. (3) as (4) and substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109–163, § 506(b)(1)(A), (2)(B), redesignated par. (4) as (5) and substituted '', (3), and (4)'' for ''and (3)''. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 109–163, § 506(b)(1)(A), (2)(C)(i), redesignated par. (5) as (6) and inserted '', or in paragraph (3),'' after ''paragraph (2)'' in introductory provisions. Former par. (6) redesignated (7).

Subsec. (a)(6)(B). Pub. L. 109–163, § 506(b)(2)(C)(ii), inserted ''or (3), as applicable'' after ''paragraph (2)''.

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

Subsec. (a)(7)(A). Pub. L. 109–163, § 506(b)(2)(D), inserted ''or (3)'' after ''paragraph (2)(B)''.

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 506(b) of Pub. L. 109–163 effective Oct. 1, 2006, and applicable with respect to promotion selection boards convened on or after that date, see section 506(c) of Pub. L. 109–163, set out as a note under section 615 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) ACTIONS 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;

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

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 14107 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable.

(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; amended Pub. L. 109–364, div. A, title V, § 512(b), Oct. 17, 2006, 120 Stat. 2184.)

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).

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–364, § 512(b)(1), substituted ''Actions'' for ''Majority'' in heading.

Subsec. (b)(3). Pub. L. 109–364, § 512(b)(2)–(4), added par. (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 17, 2006, and applicable with respect to selection boards convened on or after that date, see section 512(c) of Pub. L. 109–364, set out as a note under section 616 of this title.

§ 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.)

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).

§ 14110. Reports of promotion boards: review by Secretary

(a) REVIEW OF REPORT.—Upon receipt of the report of a promotion board submitted under section 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.)

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).

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

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

(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; amended Pub. L. 109–364, div. A, title V, § 513(b), Oct. 17, 2006, 120 Stat. 2185.)

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).

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–364 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 applicable with respect to selection boards convened on or after Oct. 17, 2006, see section 513(c) of Pub. L. 109–364, set out as a note under section 618 of this title.

DELEGATION OF FUNCTIONS

For assignment of functions of President under first sentence of subsec. (a) of this section, see section 1(c) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

§ 14112. Dissemination of names of officers selected

(a) TIME FOR DISSEMINATION.—The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

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

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

(3) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated—

(A) upon confirmation of the promotion of the officers by the Senate (in the case of promotions required to be submitted to the Senate for confirmation); or

(B) upon the approval of the report by the President (in the case of promotions not required to be submitted to the Senate for confirmation).

(b) NAMES NOT DISSEMINATED.—A list of names of officers disseminated under subsection (a) may not include—

(1) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of paragraph (2) or (3)(B) of that subsection; or

(2) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of paragraph (3)(A) of that subsection.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2930; amended Pub. L. 106–398, § 1 [[div. A], title V, § 503(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–101.)

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).

AMENDMENTS

2000—Pub. L. 106–398 amended text generally. Prior to amendment, text read as follows: ''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.''

CHAPTER 1405—PROMOTIONS

Sec.
14301. Eligibility for consideration for promotion: general rules.
14302. Promotion zones.
14303. Eligibility for consideration for promotion: minimum years of service in grade.
14304. Eligibility for consideration for promotion: maximum years of service in grade.
14305. Establishment of promotion zones: mandatory consideration for promotion.
14306. Establishment of promotion zones: Navy Reserve and Marine Corps Reserve running mate system.
14307. Number of officers to be recommended for promotion.
14308. Promotions: how made.
14309. Acceptance of promotion; oath of office.
14310. Removal of officers from a list of officers recommended for promotion.
14311. Delay of promotion: involuntary.
14312. Delay of promotion: voluntary.
14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half).
14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general.
14315. Position vacancy promotions: Army and Air Force officers.
14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion.
14317. Officers in transition to and from the active-status list or active-duty list.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 515(b)(4)(I), Jan. 6, 2006, 119 Stat. 3235, substituted ''Navy Reserve'' for ''Naval Reserve'' in item 14306.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(24), Feb. 10, 1996, 110 Stat. 497, substituted ''Number'' for ''Numbers'' in item 14307, a semicolon for a colon in item 14309, and ''State'' for ''state'' in item 14314.

§ 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 any of the following officers:

(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 is recommended for promotion to that grade in the report of an earlier selection board convened under a provision referred to in paragraph (1), in the case of such a report that has not yet been approved by the President.

(3) 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 that grade as a reserve of the Army or of the Air Force as the case may be, if that nomination is pending before the Senate.

(4) An officer who has been nominated by the President for promotion to that grade under any other provision of law, if that nomination is pending before the Senate.

(5) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 14308(b)(4) of this title.

(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 quali-

fied for promotion. The regulations shall include criteria for determining which officers below the promotion zone are exceptionally well qualified for promotion.

(e) 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.

(f) 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.

(g) BRIGADIER GENERALS.—(1) An officer who is a reserve component brigadier general of the Army or the Air Force who is not eligible for consideration for promotion under subsection (a) because the officer is not on the reserve active status list (as required by paragraph (1) of that subsection for such eligibility) is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) as of the date of the convening of the promotion board, the officer has been in an inactive status for less than one year; and

(B) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list) for at least one year.

(2) An officer who is a reserve component brigadier general of the Army or the Air Force who is on the reserve active status list but who is not eligible for consideration for promotion under subsection (a) because the officer's service does not meet the one-year-of-continuous-service requirement under paragraph (2) of that subsection is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) the officer was transferred from an inactive status to the reserve active status list during the one-year period preceding the date of the convening of the promotion board;

(B) immediately before the date of the officer's most recent transfer to an active status, the officer had been in an inactive status for less than one year; and

(C) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served for at least one year on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list).

(h) OFFICERS ON EDUCATIONAL DELAY.—An officer on the reserve active-status list is ineligible for consideration for promotion, but shall remain on the reserve active-status list, while the officer—

(1) is pursuing a program of graduate level education in an educational delay status approved by the Secretary concerned; and

(2) is receiving from the Secretary financial assistance in connection with the pursuit of that program of education while in that status.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2931; amended Pub. L. 105–85, div. A, title V, §§ 503(b), (c), 514(b), Nov. 18, 1997, 111 Stat. 1724, 1725, 1732; Pub. L. 105–261, div. A, title V, § 514, Oct. 17, 1998, 112 Stat. 2008; Pub. L. 106–65, div. A, title V, § 513(a), title X, § 1066(a)(32), Oct. 5, 1999, 113 Stat. 593, 772; Pub. L. 107–107, div. A, title V, § 505(c)(1)(B), Dec. 28, 2001, 115 Stat. 1087; Pub. L. 107–314, div. A, title V, § 521, Dec. 2, 2002, 116 Stat. 2540.)

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–314 amended subsec. (g) generally. Prior to amendment, text read as follows: "A reserve component brigadier general of the Army or the Air Force who is in an inactive status is eligible (notwithstanding subsection (a)) for consideration for promotion to major general by a promotion board convened under section 14101(a) of this title if the officer—

"(1) has been in an inactive status for less than one year as of the date of the convening of the promotion board; and

"(2) had continuously served for at least one year on the reserve active status list or the active duty list (or a combination of both) immediately before the officer's most recent transfer to an inactive status."

2001—Subsec. (c)(5). Pub. L. 107–107 added par. (5).

1999—Subsec. (g)(1), (2). Pub. L. 106–65, § 1066(a)(32), substituted "one year" for "1 year".

Subsec. (h). Pub. L. 106–65, § 513(a), added subsec. (h).

1998—Subsec. (g). Pub. L. 105–261 added subsec. (g).

1997—Subsec. (c). Pub. L. 105–85, § 503(b)(1), substituted "grade any of the following officers:" for "grade—" in introductory provisions.

Subsec. (c)(1). Pub. L. 105–85, § 503(b)(2), (3), substituted "An officer" for "an officer" and "title." for "title;".

Subsec. (c)(2). Pub. L. 105–85, § 503(b)(6), added par. (2). Former par. (2) redesignated (3).

Pub. L. 105–85, § 503(b)(2), (4), substituted "An officer" for "an officer" and "be." for "be; or".

Subsec. (c)(3). Pub. L. 105–85, § 503(c), inserted ", if that nomination is pending before the Senate" before period at end.

Pub. L. 105–85, § 503(b)(5), redesignated par. (2) as (3) and substituted "that grade" for "the next higher grade". Former par. (3) redesignated (4).

Pub. L. 105–85, § 503(b)(2), substituted "An officer" for "an officer".

Subsec. (c)(4). Pub. L. 105–85, § 503(c), inserted ", if that nomination is pending before the Senate" before period at end.

Pub. L. 105–85, § 503(b)(5), redesignated par. (3) as (4) and substituted "that grade" for "the next higher grade".

Subsecs. (e) to (g). Pub. L. 105–85, § 514(b), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e) which read as follows:

"(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 brig-

adier 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.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 513(b), Oct. 5, 1999, 113 Stat. 593, provided that:

''(1) Subsection (h) of section 14301 of title 10, United States Code (as added by subsection (a)), shall apply with respect to boards convened under section 14101(a) of such title before, on, or after the date of the enactment of this Act [Oct. 5, 1999].

''(2) The Secretary of the military department concerned, upon receipt of request submitted in a form and manner prescribed by the Secretary, shall expunge from the military records of an officer any indication of a failure of selection of the officer for promotion by a board referred to in paragraph (1) while the officer was ineligible for consideration by that board by reason of section 14301(h) of title 10, United States Code.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 503(b), (c) of Pub. L. 105–85 effective Nov. 18, 1997, and applicable with respect to selection boards that are convened under section 611(a), 14101(a), or 14502 of this title on or after Nov. 18, 1997, see section 503(d) of Pub. L. 105–85, set out as a note under section 619 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.

§ 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 promotion 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(RR), Jan. 6, 2006, 119 Stat. 3234.)

AMENDMENTS

2006—Subsec. (a)(1)(A). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

§ 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.)

§ 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.)

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."

§ 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 established 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.)

§ 14306. Establishment of promotion zones: Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(3)(J), Jan. 6, 2006, 119 Stat. 3235.)

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).

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve'' in section catchline.

§ 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 pro-

motion 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.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5901 of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

§ 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. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

(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.

(4)(A) Officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned. Such promotions shall be in the manner specified in section 12203 of this title.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter and chapter 1403 of this title.

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

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

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

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title upon the convening of such a board.

(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) The date of rank of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made under section 741(d)(4) of this title in the date of rank of an officer appointed to a higher grade under section 624(a) of this title. In any use of the authority under the preceding sentence, subparagraph (C)(ii) of such section shall be applied by substituting ''reserve active-status list'' for ''active-duty list''.

(3) Except as provided in paragraph (2) or as otherwise 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 a grade below colonel 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 or 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 Army Reserve or the Air Force Reserve, as the case may be, in that grade.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2937; amended Pub. L. 105–85, div. A, title V, § 514(c), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 107–107, div. A, title V, §§ 505(b)(1), 506(b), Dec. 28, 2001, 115 Stat. 1086, 1089; Pub. L. 109–364, div. A, title V, § 511(d)(2), Oct. 17, 2006, 120 Stat. 2183.)

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).

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 inserted at end ''A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.''

2001—Subsec. (b)(4). Pub. L. 107–107, § 505(b)(1), added par. (4).

Subsec. (c)(2). Pub. L. 107–107, § 506(b)(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 107–107, § 506(b)(1)(A), (2), redesignated par. (2) as (3) and inserted ''provided in paragraph (2) or as otherwise'' after ''Except as''.

1997—Subsec. (e)(2). Pub. L. 105–85, § 514(c)(1), inserted ''a grade below colonel in'' after ''an officer in''.

Subsec. (g). Pub. L. 105–85, § 514(c)(2), inserted ''or the Air Force'' after ''A reserve officer of the Army'', substituted ''in the Army Reserve or the Air Force Reserve, as the case may be, in that grade'' for ''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'', and struck out at end ''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.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 17, 2006, and applicable with respect to officers on promotion lists established on or after such date, see section 511(e) of Pub. L. 109–364, set out as a note under section 624 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Subsec. (c)(2) of this section applicable with respect to any report of a selection board recommending officers for promotion to the next higher grade that is submitted to the Secretary of the military department concerned on or after Dec. 28, 2001, and Secretary of the military department concerned may apply subsec. (c)(2) of this section in the case of an appointment of an officer to a higher grade resulting from a report of a selection board submitted to the Secretary before Dec. 28, 2001, if the Secretary determines that such appointment would have been made on an earlier date that is on or after Oct. 1, 2001, and was delayed under the circumstances specified in section 741(d)(4) of this title, see section 506(c) of Pub. L. 107–107, set out as a note under section 741 of this title.

§ 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.)

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) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved for promotion under section 14308(a) of this title to a grade for which appointment is required by section 12203(a) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

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

(3) In this subsection, the term ''promotion eligibility period'' means, with respect to an officer whose name is on a list of officers approved for promotion under section 14308(a) of this title to a grade for which appointment is required by section 12203(a) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the

eighteenth month following the month during which the list is so approved.

(d) CONTINUED ELIGIBILITY FOR PROMOTION.—An officer whose name is removed from a list under subsection (a)[1] (b), or (c) 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; amended Pub. L. 109–364, div. A, title V, § 515(b), Oct. 17, 2006, 120 Stat. 2186.)

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).

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–364, § 515(b)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109–364, § 515(b)(2), which directed amendment of par. (1) of subsec. (d) by substituting ''(b), or (c)'' for ''or (b)'', was executed by amending text of subsec. (d), which does not contain any pars., to reflect the probable intent of Congress.

Pub. L. 109–364, § 515(b)(1)(A), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 applicable to any promotion list approved by the President after Jan. 1, 2007, see section 515(c) of Pub. L. 109–364, set out as a note under section 629 of this title.

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsec. (a) of this section, see section 1(d) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

REMOVALS FROM PROMOTION LIST

Section 1684(b) of title XVI of div. A of Pub. L. 103–337, as amended by Pub. L. 104–106, div. A, title XV, § 1501(a)(9), Feb. 10, 1996, 110 Stat. 495, 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 14111(c) or 14310, as appropriate, of title 10, United States Code, as added by this title.''

§ 14311. Delay of promotion: involuntary

(a) DELAY DURING INVESTIGATIONS AND PROCEEDINGS.—(1) Under regulations prescribed by the Secretary of Defense, 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.

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

(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, if the officer is acquitted of the charges, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then (unless action to delay the officer's appointment to the higher grade has been taken under subsection (b)) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), 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 Defense, the appointment of an officer to a higher grade may also be delayed if there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade to which selected. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to the higher grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to the higher

[1] So in original. Probably should be followed by a comma.

grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), 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 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.

(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 recognized 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; amended Pub. L. 107–107, div. A, title V, § 505(c)(2)(B), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 109–364, div. A, title V, § 511(b), Oct. 17, 2006, 120 Stat. 2182.)

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).

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–364, § 511(b)(1), substituted ''Secretary of Defense'' for ''Secretary of the military department concerned'' in introductory provisions.

Subsec. (a)(1)(E). Pub. L. 109–364, § 511(b)(2)(A), added subpar. (E).

Subsec. (a)(2). Pub. L. 109–364, § 511(b)(2)(B), struck out ''or'' after ''show cause for retention,'' and inserted ''or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion,'' after ''of the charges,''.

Subsec. (b). Pub. L. 109–364, § 511(b)(3), inserted ''has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or'' before ''is mentally, physically,'' and substituted ''If it is later determined by a civilian official

of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to the higher grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to the higher grade'' for ''If the Secretary concerned later determines that the officer is qualified for promotion to the higher grade''. Notwithstanding directory language that the amendment be made to ''Section 14311(b) of such section'', the amendment was executed to subsec. (b) of this section to reflect the probable intent of Congress.

Pub. L. 109–364, § 511(b)(1), substituted ''Secretary of Defense'' for ''Secretary of the military department concerned''.

2001—Subsec. (a)(2). Pub. L. 107–107, § 505(c)(2)(B)(i), inserted ''(including an approved all-fully-qualified-officers list, if applicable)'' after ''on the promotion list''.

Subsec. (b). Pub. L. 107–107, § 505(c)(2)(B)(ii), inserted ''(including an approved all-fully-qualified-officers list, if applicable)'' after ''on the promotion list'' in second sentence.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Oct. 17, 2006, and applicable with respect to officers on promotion lists established on or after such date, see section 511(e) of Pub. L. 109–364, set out as a note under section 624 of this title.

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.''

§ 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.)

§ 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 Navy 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; amended Pub. L. 109–163, div. A, title V, § 515(b)(1)(SS), Jan. 6, 2006, 119 Stat. 3234.)

AMENDMENTS

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

§ 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 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; amended Pub. L. 104–201, div. A, title V, § 544(c), Sept. 23, 1996, 110 Stat. 2523.)

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).

AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104–201 struck out ''of the Air Force'' after ''reserve officer''.

§ 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 reserve 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, under regulations prescribed by the Secretary concerned, has been recommended 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 prescribed 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 the Army Reserve or is recommended for such an assignment under regulations prescribed by the Secretary of the Army, (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 or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force, 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(25), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–85, div. A, title V, § 514(d), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 106–398, § 1 [[div. A], title V, § 501], Oct. 30, 2000, 114 Stat. 1654, 1654A–98; Pub. L. 108–136, div. A, title V, § 512(b), Nov. 24, 2003, 117 Stat. 1460.)

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).

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–136 substituted ''under regulations prescribed by the Secretary concerned, has been recommended'' for ''as determined by the Secretary concerned, is available''.

2000—Subsec. (b)(1)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 501(1)], inserted ''or is recommended for such an assignment under regulations prescribed by the Secretary of the Army'' after ''Army Reserve''.

Subsec. (b)(2)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 501(2)], inserted ''or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force'' after ''reserve grade''.

1997—Subsec. (b)(1)(A). Pub. L. 105–85 substituted ''duties of a general officer of the next higher reserve grade in the Army Reserve,'' for ''duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit,''.

1996—Subsec. (a). Pub. L. 104–106 substituted ''or a reserve officer'' for ''or a Reserve officer'' in introductory provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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.)

§ 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 promotion 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.—Except as provided in subsection (e), 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 14315 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) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—(1) 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—

(A) by a mandatory promotion board convened under section 14101(a) of this title or a special selection board convened under section 14502 of this title; or

(B) in the case of an officer who has been ordered to or is serving on active duty in support of a contingency operation, by a vacancy promotion board convened under section 14101(a) of this title.

(2) An officer may not be considered for promotion under this subsection after the end of the two-year period beginning on the date on which the officer is ordered to active duty.

(3) An officer may not be considered for promotion under this subsection during a period when the operation of this section has been suspended by the President under section 123(a) of this title.

(4) Consideration of an officer for promotion under this subsection shall be under regulations prescribed by the Secretary of the military department concerned.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2945; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(26), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–85, div. A, title X, § 1073(a)(68), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 108–136, div. A, title V, § 512(a), Nov. 24, 2003, 117 Stat. 1459.)

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).

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136, § 512(a)(1), substituted ''Except as provided in subsection (e), if a reserve officer'' for ''If a reserve officer''.

Subsec. (e). Pub. L. 108–136, § 512(a)(2), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''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 operation of this section under the provisions of section 123 or 10213 of this title.''

1997—Subsec. (d). Pub. L. 105–85 substituted ''section 14315'' for ''section 14314''.

1996—Subsec. (e). Pub. L. 104–106 inserted heading and substituted ''123 or 10213'' for ''10213 or 644''.

EFFECTIVE DATE OF 1996 AMENDMENT

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

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 reserve lieutenant commanders of the Navy.
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.
14508. Removal from the reserve active-status list for years of service: reserve general and flag officers.

Sec.
14509. Separation at age 62: reserve officers in grades below brigadier general or rear admiral (lower half).
14510. Separation at age 62: brigadier generals and rear admirals (lower half).
14511. Separation at age 64: major generals and rear admirals.
14512. Separation at age 66: officers holding certain offices.
14513. Failure of selection for promotion: transfer, retirement, or discharge.
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.
14518. Continuation of officers to complete disciplinary action.
14519. Deferment of retirement or separation for medical reasons.

AMENDMENTS

2006—Pub. L. 109–364, div. A, title V, § 503(f), Oct. 17, 2006, 120 Stat. 2178, struck out ''reserve'' before ''brigadier'' in item 14510 and substituted ''62'' for ''60'' in items 14509 and 14510, ''64'' for ''62'' in item 14511, and ''66'' for ''64'' in item 14512.

2002—Pub. L. 107–314, div. A, title V, § 522(b), Dec. 2, 2002, 116 Stat. 2541, added item 14519.

2001—Pub. L. 107–107, div. A, title V, § 517(b)(2)(B), Dec. 28, 2001, 115 Stat. 1094, substituted ''Failure of selection for promotion: transfer, retirement, or discharge'' for ''Separation for failure of selection of promotion'' in item 14513.

1999—Pub. L. 106–65, div. A, title V, § 511(b), Oct. 5, 1999, 113 Stat. 592, added item 14518.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(27), Feb. 10, 1996, 110 Stat. 497, inserted ''reserve'' after ''Marine Corps and'' in item 14506, ''reserve'' after ''Removal from the'' in item 14507, and ''in grades'' after ''reserve officers'' in item 14509.

§ 14501. Failure of selection for promotion

(a) OFFICERS BELOW THE GRADE OF COLONEL OR NAVY CAPTAIN.—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 Navy 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 promotion for which recommended by 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 for promotion 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(28), Feb. 10, 1996, 110 Stat. 498; Pub. L. 109–163, div. A, title V, § 515(b)(1)(TT), Jan. 6, 2006, 119 Stat. 3234.)

AMENDMENTS

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

1996—Subsec. (a). Pub. L. 104–106 inserted heading.

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE

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

Pub. L. 103–337, div. A, title XVI, § 1690, Oct. 5, 1994, 108 Stat. 3025, 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 [now Navy 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 [now Navy 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.''

§ 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, or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) 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 in a matter material to the decision of the board 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; amended Pub. L. 107–107, div. A, title V, § 505(c)(3)(B), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 109–364, div. A, title V, § 514(b), Oct. 17, 2006, 120 Stat. 2185.)

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).

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–364 inserted ''in a matter material to the decision of the board'' after ''contrary to law''.

2001—Subsec. (a)(1). Pub. L. 107–107 inserted ''or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) of this title because of administrative error,'' after ''because of administrative error,''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–364 effective Mar. 1, 2007, and applicable with respect to selection boards convened on or after that date, see section 514(c) of Pub. L. 109–364, set out as a note under section 628 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.)

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.''

§ 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 recommended 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.

(c) OFFICERS IN GRADE OF FIRST LIEUTENANT OR LIEUTENANT (JUNIOR GRADE) FOUND NOT FULLY QUALIFIED FOR PROMOTION.—For the purposes of this chapter, an officer of the Army, Air Force, or Marine Corps on a reserve active-status list who holds the grade of first lieutenant, and an officer of the Navy on a reserve active-status list who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 14308(b)(4) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2950; amended Pub. L. 107–107, div. A, title V, § 505(b)(2), Dec. 28, 2001, 115 Stat. 1087.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 added subsec. (c).

§ 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.)

§ 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 later of (1) the first day of the month after the month in which the officer completes 20 years of commissioned service, or (2) 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. 2951; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(29), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106–65, div. A, title V, § 514(a), Oct. 5, 1999, 113 Stat. 593.)

AMENDMENTS

1999—Pub. L. 106–65 inserted ''the later of (1)'' after ''in accordance with section 14513 of this title on'' and

'', or (2) 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'' before the period at end.

1996—Pub. L. 104–106 inserted comma after ''Force'' in section catchline.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 514(b), Oct. 5, 1999, 113 Stat. 593, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to removals of reserve officers from reserve active-status lists under section 14506 of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 5, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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.

(c) TEMPORARY AUTHORITY TO RETAIN CERTAIN OFFICERS DESIGNATED AS JUDGE ADVOCATES.—(1) Notwithstanding the provisions of subsections (a) and (b), the Secretary of the Air Force may retain on the reserve active-status list any reserve officer of the Air Force who is designated as a judge advocate and who obtained the first professional degree in law while on an educational delay program subsequent to being commissioned through the Reserve Officers' Training Corps.

(2) No more than 50 officers may be retained on the reserve active-status list under the authority of paragraph (1) at any time.

(3) No officer may be retained on the reserve active-status list under the authority of paragraph (1) for a period exceeding three years from the date on which, but for that authority, that officer would have been removed from the reserve active-status list under subsection (a) or (b).

(4) The authority of the Secretary of the Air Force under paragraph (1) expires on September 30, 2003.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104–201, div. A, title V, § 508(a), Sept. 23, 1996, 110 Stat. 2513.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 508(b) of Pub. L. 104–201 provided that: ''Subsection (c) of section 14507 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

§ 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 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 last day of the month in 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.

(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 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 64 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(30), Feb. 10, 1996, 110 Stat. 498; Pub. L. 105–85, div. A, title V, § 521(b), Nov. 18, 1997, 111 Stat. 1734; Pub. L. 109–364, div. A, title V, § 503(e), Oct. 17, 2006, 120 Stat. 2178.)

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).

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–364, § 503(e)(1), substituted ''62'' for ''60''.

Subsec. (d). Pub. L. 109–364, § 503(e)(2), substituted ''64'' for ''62''.

1997—Subsec. (c). Pub. L. 105–85 substituted ''not later than the last day of the month in which the officer becomes 60 years of age'' for ''not later than the date on which the officer becomes 60 years of age''.

1996—Subsecs. (c), (d). Pub. L. 104–106 struck out ''this'' after ''from an active status under''.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 14509. Separation at age 62: 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 62 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; amended Pub. L. 109–364, div. A, title V, § 503(c), Oct. 17, 2006, 120 Stat. 2178.)

AMENDMENTS

2006—Pub. L. 109–364 substituted ''62'' for ''60'' in section catchline and text.

§ 14510. Separation at age 62: 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 62 years of age.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2952; amended Pub. L. 109–364, div. A, title V, § 503(b), Oct. 17, 2006, 120 Stat. 2178.)

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).

AMENDMENTS

2006—Pub. L. 109–364 substituted ''age 62: brigadier generals'' for ''age 60: reserve brigadier generals'' in section catchline and ''62'' for ''60'' in text.

§ 14511. Separation at age 64: 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 64 years of age.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 109–364, div. A, title V, § 503(a), Oct. 17, 2006, 120 Stat. 2178.)

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).

AMENDMENTS

2006—Pub. L. 109–364 substituted ''64'' for ''62'' in section catchline and text.

§ 14512. Separation at age 66: officers holding certain offices

(a) ARMY AND AIR FORCE.—(1) Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, a reserve officer of the Army or Air Force who is specified in paragraph (2) shall on the last day of the month in which the officer becomes 66 years of age, be separated in accordance with section 14515 of this title.

(2) Paragraph (1) applies to a reserve officer of the Army or Air Force who is any of the following:

(A) The Chief of the National Guard Bureau.

(B) The Chief of the Army Reserve, Chief of the Air Force Reserve, Director of the Army National Guard, or Director of the Air National Guard.

(C) An adjutant general.

(D) If a reserve officer of the Army, the commanding general of the troops of a State.

(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 66 years of age. Not more than 10 officers may be so deferred at any one time, distributed between the Navy 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; amended Pub. L. 109–163, div. A, title V, §§ 511, 515(b)(1)(UU), Jan. 6, 2006, 119 Stat. 3231, 3234; Pub. L. 109–364, div. A, title V, § 503(d), Oct. 17, 2006, 120 Stat. 2178.)

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).

AMENDMENTS

2006—Pub. L. 109–364, § 503(d)(2), substituted ''66'' for ''64'' in section catchline.

Subsec. (a). Pub. L. 109–163, § 511, designated existing provisions as par. (1), substituted ''who is specified in paragraph (2)'' for ''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,'', and added par. (2).

Subsec. (a)(1). Pub. L. 109–364, § 503(d)(1), substituted ''66'' for ''64''.

Subsec. (b). Pub. L. 109–364, § 503(d)(1), substituted ''66'' for ''64''.

Pub. L. 109–163, § 515(b)(1)(UU), substituted ''Navy Reserve'' for ''Naval Reserve''.

§ 14513. Failure of selection for promotion: transfer, retirement, or discharge

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 for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; 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; amended Pub. L. 107–107, div. A, title V, § 517(b)(1), (2)(A), Dec. 28, 2001, 115 Stat. 1094.)

AMENDMENTS

2001—Pub. L. 107–107, § 517(b)(2)(A), substituted ''Failure of selection for promotion: transfer, retirement, or discharge'' for ''Separation for failure of selection of promotion'' in section catchline.

Par. (2). Pub. L. 107–107, § 517(b)(1), substituted ''if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve'' for '', if the officer is qualified and applies for such transfer''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as a note under section 10154 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 for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 107–107, div. A, title V, § 517(c), Dec. 28, 2001, 115 Stat. 1094.)

AMENDMENTS

2001—Par. (1). Pub. L. 107–107, § 517(c)(1), substituted ''if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve'' for '', if the officer is qualified and applies for such transfer''.

Par. (2). Pub. L. 107–107, § 517(c)(2), added par. (2) and struck out former par. (2) which read as follows: ''if the officer is not qualified or does not apply for such transfer, be discharged from the officer's reserve appointment.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as a note under section 10154 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 for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2954; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(31), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–107, div. A, title V, § 517(d), Dec. 28, 2001, 115 Stat. 1095.)

AMENDMENTS

2001—Par. (1). Pub. L. 107–107, § 517(d)(1), substituted ''if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve'' for '', if the officer is qualified and applies for such transfer''.

Par. (2). Pub. L. 107–107, § 517(d)(2), added par. (2) and struck out former par. (2) which read as follows: ''if the officer is not qualified or does not apply for transfer to the Retired Reserve, be discharged from the officer's reserve appointment.''

1996—Pub. L. 104–106 substituted ''inactive-status'' for ''inactive status'' in introductory provisions.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as a note under section 10154 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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.)

§ 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.)

§ 14518. Continuation of officers to complete disciplinary action

The Secretary concerned may delay the separation or retirement under this chapter of an officer against whom an action has been commenced with a view to trying the officer by court-martial. Any such delay may continue until the completion of the disciplinary action against the officer.

(Added Pub. L. 106–65, div. A, title V, § 511(a), Oct. 5, 1999, 113 Stat. 592.)

§ 14519. Deferment of retirement or separation for medical reasons

(a) AUTHORITY.—If, in the case of an officer required to be retired or separated under this chapter or chapter 1409 of this title, the Secretary concerned determines that the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the officer's well being before the date on which the officer would otherwise be required to retire or be separated, the Secretary may defer the retirement or separation of the officer.

(b) PERIOD OF DEFERMENT.—A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after the completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 107–314, div. A, title V, § 522(a), Dec. 2, 2002, 116 Stat. 2540.)

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.
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.

§ 14701. Selection of officers for continuation on the reserve active-status list

(a) CONSIDERATION FOR CONTINUATION.—(1) 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 under regulations prescribed by the Secretary of Defense.

(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 under regulations prescribed under paragraph (1) 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) 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; amended Pub. L. 106–398, § 1 [[div. A], title V, § 522], Oct. 30, 2000, 114 Stat. 1654, 1654A–108; Pub. L. 108–136, div. A, title V, § 511(a), Nov. 24, 2003, 117 Stat. 1459.)

AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108–136, § 511(a)(1)(A), substituted ''under regulations prescribed by the Secretary of Defense'' for ''by a selection board convened under section 14101(b) of this title''.

Subsec. (a)(6). Pub. L. 108–136, § 511(a)(1)(B), substituted ''under regulations prescribed under paragraph (1)'' for ''as a result of the convening of a selection board under section 14101(b) of this title''.

Subsecs. (b) to (d). Pub. L. 108–136, § 511(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsecs. (b) and (c) which read as follows:

''(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.''

2000—Subsec. (a)(1). Pub. L. 106–398 substituted ''A reserve officer'' for ''Upon application, a reserve officer''.

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.

§ 14702. Retention on reserve active-status list of certain officers until age 60

(a) RETENTION.—Notwithstanding the provisions of section 14506, 14507, or 14508 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, colonel, or brigadier general 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; amended Pub. L. 105–85, div. A, title V, § 521(a), Nov. 18, 1997, 111 Stat. 1734.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85, in introductory provisions, substituted ''section 14506, 14507, or 14508'' for ''section 14506 or 14507'' and ''colonel, or brigadier general'' for ''or colonel''.

§ 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 veteri-

narian, 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, Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.

(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.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2956; amended Pub. L. 106–65, div. A, title V, § 516, Oct. 5, 1999, 113 Stat. 594; Pub. L. 106–398, § 1 [[div. A], title V, § 523], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

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).

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106–398 substituted ''Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.'' for ''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.''

1999—Subsec. (b). Pub. L. 106–65 struck out ''(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)'' after ''67 years of age''.

§ 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.)

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).

§ 14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps

(a) AUTHORITY TO CONSIDER.—An officer in the Navy 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.—(1) If the Secretary of the Navy determines that consideration of officers for early retirement under this section is necessary, the Secretary shall convene a selection board under section 14101(b) of this title to recommend an appropriate number of officers for early retirement.

(2) In the case of such a board convened to consider officers in the grade of rear admiral or major general, the Secretary of the Navy may appoint the board without regard to section 14102(b) of this title. In doing so, however, the Secretary shall ensure that—

(A) each regular commissioned officer appointed to the board holds a grade higher than the grade of rear admiral or major general; and

(B) at least one member of the board is a reserve officer who holds the grade of rear admiral or major general.

(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; amended Pub. L. 105–261, div. A, title V, § 515, Oct. 17, 1998, 112 Stat. 2008; Pub. L. 108–136, div. A, title V, § 511(b)(3), Nov. 24, 2003, 117 Stat. 1459; Pub. L. 109–163, div. A, title V, § 515(b)(1)(VV), Jan. 6, 2006, 119 Stat. 3234.)

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).

AMENDMENTS

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

2003—Subsec. (b)(1). Pub. L. 108–136 substituted ''selection board'' for ''continuation board''.

1998—Subsec. (b). Pub. L. 105–261 designated existing provisions as par. (1), inserted ''of officers'' after ''consideration'' and ''continuation'' after ''shall convene a'', and added par. (2).

§ 14706. Computation of total years of service

(a) For the purpose of this chapter and chapter 1407 of this title, a Reserve officer's years of service include all service of the officer as a commissioned officer of a uniformed service other than the following:

(1) Service as a warrant officer.

(2) Constructive service.

(3) Service after appointment as a commissioned officer of a reserve component while in a program of advanced education to obtain the first professional degree required for appoint-

ment, designation, or assignment to a professional specialty, but only if that service occurs before the officer commences initial service on active duty or initial service in the Ready Reserve in the specialty that results from such a degree.

(b) The exclusion under subsection (a)(3) does not apply to service performed by an officer who previously served on active duty or participated as a member of the Ready Reserve in other than a student status for the period of service preceding the member's service in a student status.

(c) For purposes of subsection (a)(3), an officer shall be considered to be in a professional specialty if the officer is appointed or assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Service Corps, the Nurse Corps, or the Army Medical Specialists Corps or is designated as a chaplain or judge advocate.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2957; amended Pub. L. 106–65, div. A, title V, § 515, Oct. 5, 1999, 113 Stat. 594.)

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).

AMENDMENTS

1999—Pub. L. 106–65 amended text generally. Prior to amendment, text read as follows: ''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).''

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.

§ 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

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.

§ 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.)

§ 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 title 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 retained 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; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(32), Feb. 10, 1996, 110 Stat. 498.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''title'' for ''chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

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

§ 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.)

§ 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.)

§ 14906. Officers eligible to serve on boards

(a) COMPOSITION OF BOARDS.—Each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

(2) Each member of the board shall hold a grade above major or lieutenant commander, except that at least one member of the board shall hold a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) 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; amended Pub. L. 106–65, div. A, title V, § 504(b), Oct. 5, 1999, 113 Stat. 591.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65 amended heading and text generally. Prior to amendment, text read as follows:

''(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.''

§ 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.)

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).

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
1607.	Educational Assistance for Reserve Component Members Supporting Contingency Operations and Certain Other Operations	16161
1608.	Health Professions Stipend Program	16201
1609.	Education Loan Repayment Programs	16301
1611.	Other Educational Assistance Programs	16401

AMENDMENTS

2004—Pub. L. 108–375, div. A, title V, § 527(c), Oct. 28, 2004, 118 Stat. 1894, added item for chapter 1607.

1999—Pub. L. 106–65, div. A, title V, § 551(a)(2), Oct. 5, 1999, 113 Stat. 614, added item for chapter 1611.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(1), Feb. 10, 1996, 110 Stat. 495, substituted ''Repayment Programs'' for ''Repayments'' in item for chapter 1609.

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 limitation for use of entitlement.
16134.	Termination of assistance.
16135.	Failure to participate satisfactorily; penalties.
16136.	Administration of program.
16137.	Biennial report to Congress.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 548(b), Oct. 5, 1999, 113 Stat. 609, substituted ''Biennial report to Congress'' for ''Reports to Congress'' in item 16137.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(33), Feb. 10, 1996, 110 Stat. 498, substituted ''limitation'' for ''limitations'' in item 16133.

§ 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 Homeland Security, 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 subsections (d) through (f), 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) $251 (as increased from time to time under paragraph (2)) per month for each month of full-time pursuit of a program of education;

(B) $188 (as increased from time to time under paragraph (2)) per month for each month of three-quarter-time pursuit of a program of education;

(C) $125 (as increased from time to time under paragraph (2)) 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, the Secretary shall provide a percentage increase

(rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1) 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 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 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)(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.

(f)(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.

(g)(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 individualized 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.

(h) 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.

(i)(1) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under subparagraphs (A) through (D) of subsection (b)(1) as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $350 per month.

(2) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, who is eligible for educational benefits under chapter 30 (other than section 3012) of title 38 and who meets the eligibility criteria specified in subparagraphs (A) and (B) of section 16132(a)(1) of this title, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under section 3015 of title 38 as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $350 per month.

(3) The authority provided by paragraphs (1) and (2) shall be exercised by the Secretaries concerned under regulations prescribed by the Secretary of Defense.

(j)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a licensing or certification test described in section 3452(b) of title 38 is the lesser of $2,000 or the fee charged for the test.

(2) The number of months of entitlement charged in the case of any individual for such licensing or certification test is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance which, but for paragraph (1), such individual would otherwise be paid under subsection (b).

(3) In no event shall payment of educational assistance under this subsection for such a test exceed the amount of the individual's available entitlement under this chapter.

(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; Pub. L. 104–106, div. A, title X, § 1076, Feb. 10, 1996, 110 Stat. 450; Pub. L. 104–275, title I, § 105(d), Oct. 9, 1996, 110 Stat. 3327; Pub. L. 105–85, div. A, title V, § 553(a), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105–178, title VIII, § 8203(b)(1)–(3), June 9, 1998, 112 Stat. 493, 494; Pub. L. 106–65, div. A, title X, § 1066(a)(33), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109–163, div. A, title V, § 539(a), Jan. 6, 2006, 119 Stat. 3250.)

AMENDMENTS

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

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

1999—Subsec. (b)(1). Pub. L. 106–65 inserted ''in'' after ''Except as provided'' in introductory provisions.

1998—Subsec. (b)(1). Pub. L. 105–178, § 8203(b)(3), struck out ''in paragraph (2) and'' after ''Except as provided'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 105–178, § 8203(b)(1)(A), substituted ''$251 (as increased from time to time under paragraph (2))'' for ''$190''.

Subsec. (b)(1)(B). Pub. L. 105–178, § 8203(b)(1)(B), substituted ''$188 (as increased from time to time under paragraph (2))'' for ''$143''.

Subsec. (b)(1)(C). Pub. L. 105–178, § 8203(b)(1)(C), substituted ''$125 (as increased from time to time under paragraph (2))'' for ''$95''.

Subsec. (b)(2). Pub. L. 105–178, § 8203(b)(2), in introductory provisions, substituted '', the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1)'' for ''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''.

1997—Subsec. (c)(3)(B)(i). Pub. L. 105–85 struck out '', in connection with the Persian Gulf War,'' after ''being ordered''.

1996—Subsec. (b)(1). Pub. L. 104–275, § 105(d)(2), substituted ''(f)'' for ''(g)''.

Subsecs. (e) to (i). Pub. L. 104–275, § 105(d)(1), redesignated subsecs. (f) to (j) as (e) to (i), respectively, and struck out former subsec. (e) which read as follows:

''(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.''

Subsec. (j). Pub. L. 104–275, § 105(d)(1), redesignated subsec. (j) as (i).

Pub. L. 104–106 added subsec. (j).

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 2006 AMENDMENT

Pub. L. 109–163, div. A, title V, § 539(c), Jan. 6, 2006, 119 Stat. 3250, provided that: ''The amendments made by this section [amending this section and section 16162 of this title] shall apply to a licensing or certification test administered on or after the date of the enactment of this Act [Jan. 6, 2006].''

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title VIII, § 8203(b)(4), June 9, 1998, 112 Stat. 494, provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1998, and shall apply with respect to educational assistance allowances paid for months after September 1998. However, no adjustment in rates of educational assistance shall be made under paragraph (2) of section 16131(b) of title 10, United States Code, as amended by paragraph (2), for fiscal year 1999.''

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.''

INCREASE IN BENEFIT FOR INDIVIDUALS PURSUING APPRENTICESHIP OR ON-JOB TRAINING; SELECTED RESERVE MONTGOMERY GI BILL

Pub. L. 108–454, title I, § 103(d), Dec. 10, 2004, 118 Stat. 3601, provided that: ''For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (d)(1) of section 16131 of title 10, United States Code, shall be applied as if—

''(1) the reference to '75 percent' in subparagraph (A) were a reference to '85 percent';

''(2) the reference to '55 percent' in subparagraph (B) were a reference to '65 percent'; and

''(3) the reference to '35 percent' in subparagraph (C) were a reference to '45 percent'.''

1995 COST-OF-LIVING ADJUSTMENT IN RATES OF EDUCATIONAL ASSISTANCE

Pub. L. 103–66, title XII, § 12009(c), Aug. 10, 1993, 107 Stat. 416, provided that the fiscal year 1995 cost-of-liv-

ing adjustments in the rates of educational assistance payable under chapter 30 of Title 38, Veterans' Benefits, and this chapter were to 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 subsec. (b)(2) of this section but for section 12009 of Pub. L. 103–66.

§ 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 applying for benefits under this section, has completed the requirements of a secondary school diploma (or an equivalency certificate);

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 sections 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; Pub. L. 104–106, div. A, title XV, § 1501(b)(34), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106–419, title I, § 102(d), Nov. 1, 2000, 114 Stat. 1825.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–419 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''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;''.

1996—Subsec. (c). Pub. L. 104–106 substituted ''sections 16134'' for ''section 16134''.

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.''

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective 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.''

§ 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 14-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 December 31, 2001, 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) In the case of a member of the Selected Reserve of the Ready Reserve who 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—

(A) 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

(B) 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.

(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; Pub. L. 105–85, div. A, title V, § 553(b), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105–261, div. A, title V, § 561(q), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title V, § 571(p)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–314, div. A, title VI, § 641(a), Dec. 2, 2002, 116 Stat. 2576.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–314 substituted ''14-year'' for ''10-year''.

2000—Subsec. (b)(1)(B). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (b)(1)(B). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1997—Subsec. (b)(4). Pub. L. 105–85 struck out ''(A)'' before ''In the case of'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, struck out '', during the Persian Gulf War,'' after ''Ready Reserve who'', and struck out former subpar. (B) which read as follows: ''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.''

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 2002 AMENDMENT

Pub. L. 107–314, div. A, title VI, § 641(b), Dec. 2, 2002, 116 Stat. 2577, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to periods of entitlement to educational assistance under chapter 1606 of title 10, United States Code, that begin on or after October 1, 1992.''

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.

§ 16135. Failure to participate satisfactorily; penalties

(a) PENALTIES.—At the option of the Secretary concerned, a member of the Selected Reserve of an armed force who does not 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, may—

(1) 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

(2) be subject to the repayment provisions under section 303a(e) of title 37.

(b) EFFECT OF REPAYMENT.—Any repayment under section 303a(e) of title 37 shall not affect the period of obligation of a member to serve as a Reserve in the Selected Reserve.

(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; Pub. L. 104–106, div. A, title XV, § 1501(b)(35), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–314, div. A, title VI, § 642, Dec. 2, 2002, 116 Stat. 2577; Pub. L. 109–163, div. A, title VI, § 687(c)(12), Jan. 6, 2006, 119 Stat. 3335.)

AMENDMENTS

2006—Pub. L. 109–163 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to penalties for failure of a member of the Selected Reserve of the Ready Reserve of an armed force to participate satisfactorily in required training.

2002—Subsec. (c). Pub. L. 107–314 added subsec. (c).

1996—Subsec. (b)(1)(A). Pub. L. 104–106 substituted ''16131(a)'' for ''2131(a)''.

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective 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.

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

§ 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 Homeland Security, 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 certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; 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; Pub. L. 105–368, title II, § 204(b), Nov. 11, 1998, 112 Stat. 3327; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

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

1998—Subsec. (c)(2). Pub. L. 105–245 substituted ''pilot certificate'' for ''pilot's license'' in two places and inserted '', on the day the individual begins a course of flight training,'' after ''meets''.

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 2002 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title II, § 204(c), Nov. 11, 1998, 112 Stat. 3327, provided that: "The amendments made by this section [amending this section and sections 3034 and 3241 of Title 38, Veterans' Benefits] shall apply with respect to courses of flight training beginning on or after October 1, 1998."

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."

§ 16137. Biennial report to Congress

The Secretary of Defense shall submit to Congress a report not later than March 1 of each odd-numbered year concerning the operation of the educational assistance program established by this chapter during the preceding two fiscal years. 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 those fiscal years. The Secretary may submit the report more frequently and adjust the period covered by the report accordingly.

(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; amended Pub. L. 104–106, div. A, title X, § 1077, Feb. 10, 1996, 110 Stat. 451; Pub. L. 106–65, div. A, title V, § 548(a), Oct. 5, 1999, 113 Stat. 609.)

AMENDMENTS

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, text read as follows: "The Secretary of Defense shall submit to the Congress a report not later than March 1 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."

1996—Pub. L. 104–106 substituted "March 1 of each year" for "December 15 of each year".

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 1607—EDUCATIONAL ASSISTANCE FOR RESERVE COMPONENT MEMBERS SUPPORTING CONTINGENCY OPERATIONS AND CERTAIN OTHER OPERATIONS

Sec.
16161. Purpose.
16162. Educational assistance program.
16163. Eligibility for educational assistance.
16164. Time limitation for use of entitlement.
16165. Termination of assistance.
16166. Administration of program.

§ 16161. Purpose

The purpose of this chapter is to provide educational assistance to members of the reserve components called or ordered to active service in response to a war or national emergency declared by the President or the Congress, in recognition of the sacrifices that those members make in answering the call to duty.

(Added Pub. L. 108–375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1890.)

§ 16162. Educational assistance program

(a) PROGRAM ESTABLISHMENT.—The Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and main-

tain a program as prescribed in this chapter to provide educational assistance to members of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned.

(b) AUTHORIZED EDUCATION PROGRAMS.—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.

(c) BENEFIT AMOUNT.—(1) The educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, an educational assistance allowance to each member entitled to educational assistance under this chapter who is pursuing a program of education authorized under subsection (b).

(2) The educational assistance allowance provided under this chapter shall be based on the applicable percent under paragraph (4) to the applicable rate provided under section 3015 of title 38 for a member whose entitlement is based on completion of an obligated period of active duty of three years.

(3) The educational assistance allowance provided under this section for a person who is undertaking a program for which a reduced rate is specified in chapter 30 of title 38, that rate shall be further adjusted by the applicable percent specified in paragraph (4).

(4) The adjusted educational assistance allowance under paragraph (2) or (3), as applicable, shall be—

(A) 40 percent in the case of a member of a reserve component who performed active service for 90 consecutive days but less than one continuous year;

(B) 60 percent in the case of a member of a reserve component who performed active service for one continuous year but less than two continuous years; or

(C) 80 percent in the case of a member of a reserve component who performed active service for two continuous years or more.

(d) MAXIMUM MONTHS OF ASSISTANCE.—(1) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any member under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(2)(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) 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) 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 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).

(e) AVAILABILITY OF ASSISTANCE FOR LICENSING AND CERTIFICATION TESTS.—The provisions of section 16131(j) of this title shall apply to the provision of educational assistance under this chapter, except that, in applying such section under this chapter, the reference to subsection (b) in paragraph (2) of such section is deemed to be a reference to subsection (c) of this section.

(Added Pub. L. 108–375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1890; amended Pub. L. 109–163, div. A, title V, § 539(b), Jan. 6, 2006, 119 Stat. 3250.)

AMENDMENTS

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 applicable to a licensing or certification test administered on or after Jan. 6, 2006, see section 539(c) of Pub. L. 109–163, set out as a note under section 16131 of this title.

§ 16163. Eligibility for educational assistance

(a) ELIGIBILITY.—On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter if the member—

(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or

(2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(b) DISABLED MEMBERS.—Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.

(c) WRITTEN NOTIFICATION.—(1) Each member who becomes entitled to educational assistance under subsection (a) shall be given a statement in writing prior to release from active service that summarizes the provisions of this chapter and stating clearly and prominently the substance of section 16165 of this title as such section may apply to the member.

(2) At the request of the Secretary of Veterans Affairs, the Secretary concerned shall transmit a notice of entitlement for each such member to that Secretary.

(d) BAR FROM DUAL ELIGIBILITY.—A member who qualifies for educational assistance under this chapter 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 make an irrevocable election (in such form and manner as the Secretary of Veterans Affairs may prescribe) as to the program to which such service is to be credited.

(e) BAR FROM DUPLICATION OF EDUCATIONAL ASSISTANCE ALLOWANCE.—(1) Except as provided in paragraph (2), an individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 1606 of this title, chapter 30, 31, 32, or 35 of title 38, or under the Hostage Relief Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note) may not receive assistance under more than one such programs[1] and shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) under which program the member elects to receive educational assistance.

(2) The restriction on duplication of educational assistance under paragraph (1) does not apply to the entitlement of educational assistance under section 16131(i) of this title.

(Added Pub. L. 108–375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1892; amended Pub. L. 109–163, div. A, title V, § 540(a), Jan. 6, 2006, 119 Stat. 3251.)

REFERENCES IN TEXT

The Hostage Relief Act of 1980, referred to in subsec. (e)(1), is Pub. L. 96–449, Oct. 14, 1980, 94 Stat. 1967, as amended, which was formerly set out as a note under section 5561 of Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–163 substituted ''Secretary of Veterans Affairs'' for ''Secretary concerned''.

§ 16164. Time limitation for use of entitlement

(a) DURATION OF ENTITLEMENT.—Except as provided in subsection (b), a member remains entitled to educational assistance under this chapter while serving—

(1) in the Selected Reserve of the Ready Reserve, in the case of a member called or ordered to active service while serving in the Selected Reserve; or

(2) in the Ready Reserve, in the case of a member ordered to active duty while serving in the Ready Reserve (other than the Selected Reserve).

(b) DURATION OF ENTITLEMENT FOR DISABLED MEMBERS.—(1) In the case of a person who is separated from the Ready 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, such person's entitlement to educational assistance expires at the end of the 10-year period beginning on the date on which such person became entitled to such assistance.

(2) The provisions of subsections (d) and (f) of section 3031 of title 38 shall apply to the period of entitlement prescribed by paragraph (1).

(Added Pub. L. 108–375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1892.)

§ 16165. Termination of assistance

(a) IN GENERAL.—Except as provided in subsection (b), educational assistance may not be provided under this chapter, or if being provided under this chapter, shall be terminated—

(1) if the member is receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

(2) when the member separates from the Ready Reserve, as provided for under section 16164(a)(1) or section 16164(a)(2), as applicable, of this title.

(b) EXCEPTION.—Under regulations prescribed by the Secretary of Defense, educational assistance may be provided under this chapter to a member of the Selected Reserve of the Ready Reserve who incurs a break in service in the Selected Reserve of not more than 90 days if the member continues to serve in the Ready Reserve during and after such break in service.

(Added Pub. L. 108–375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1893; amended Pub. L. 109–163, div. A, title V, § 540(b), Jan. 6, 2006, 119 Stat. 3251.)

AMENDMENTS

2006—Pub. L. 109–163 designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b), educational assistance'' for ''Educational assistance'', and added subsec. (b).

§ 16166. Administration of program

(a) ADMINISTRATION.—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 Homeland Security, 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) PROGRAM MANAGEMENT.—Except as otherwise provided in this chapter, the provisions of sections 503, 511, 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term ''eligible veteran'' and the term ''person'', as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(c) FLIGHT TRAINING.—The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight train-

[1] So in original. Probably should be ''program''.

ing 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 certificate and meets, on the day the member begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; 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.

(d) TRUST FUND.—Amounts for payments for benefits under this chapter shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.

(Added Pub. L. 108–375, div. A, title V, § 527(a), Oct. 28, 2004, 118 Stat. 1893.)

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, the Secretary of each military department may establish and maintain a program to provide financial assistance under this chapter to persons engaged in training that leads to a degree in medicine or dentistry or training in a health professions specialty that is critically needed in wartime. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in health care education and training in return for a commitment to subsequent service in the Ready Reserve.

(b) MEDICAL AND DENTAL SCHOOL STUDENTS.—(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 eligible to be appointed as an officer in a reserve component;

(B) is enrolled or has been accepted for enrollment in an institution in a course of study that results in a degree in medicine or dentistry;

(C) signs an agreement that, unless sooner separated, the person will—

(i) complete the educational phase of the program;

(ii) accept a reappointment or redesignation within the person's reserve component, if tendered, based upon the person's health profession, following satisfactory completion of the educational and intern programs; and

(iii) participate in a residency program; and

(D) if required by regulations prescribed by the Secretary of Defense, agrees to apply for, if eligible, and accept, if offered, residency training in a health profession skill which has been designated by the Secretary of Defense as a critically needed wartime skill.

(2) Under the agreement—

(A) the Secretary of the military department concerned shall agree to pay the participant a stipend, in the amount determined under subsection (f), for the period or the remainder of the period that the student is satisfactorily progressing toward a degree in medicine or dentistry while enrolled in an accredited medical or dental school;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as an 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 in the Selected Reserve, upon successful completion of the program, for the period of service applicable under paragraph (3).

(3)(A) Subject to subparagraph (B), the period for which a participant is required to serve in the Selected Reserve under the agreement pursuant to paragraph (2)(D) shall be one year for each period of six months, or part thereof, for which the participant is provided a stipend pursuant to the agreement.

(B) In the case of a participant who enters into a subsequent agreement under subsection (c) and successfully completes residency training in a specialty designated by the Secretary of Defense as a specialty critically needed by the military department in wartime, the requirement to serve in the Selected Reserve may be reduced to one year for each year, or part thereof, for which the stipend was provided while enrolled in medical or dental school.

(c) PHYSICIANS AND DENTISTS IN CRITICAL WARTIME 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 or dental school;

(B) is eligible for appointment, designation, or assignment as a medical officer or dental officer in the Reserve of the armed force concerned or has been appointed as a medical or dental 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 or dentists in a medical or dental 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 (f), 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 or dental 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, one year in the Ready Reserve for each six months, 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) 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 Navy 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 (f), 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, one year in the Ready Reserve for each six months, 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.

(e) BACCALAUREATE STUDENTS IN NURSING OR OTHER HEALTH PROFESSIONS.—(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) 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.

(f) 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; Pub. L. 104–106, div. A, title VII, § 736, Feb. 10, 1996, 110 Stat. 383; Pub. L. 107–107, div. A, title V, § 539, Dec. 28, 2001, 115 Stat. 1108; Pub. L. 109–163, div. A, title V, § 515(b)(1)(WW), Jan. 6, 2006, 119 Stat. 3234.)

AMENDMENTS

2006—Subsec. (d)(1)(B)(ii). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

2001—Subsec. (a). Pub. L. 107–107, § 539(a), struck out ''specialties critically needed in wartime'' after ''qualified in health professions'' and substituted ''training that leads to a degree in medicine or dentistry or training in a health professions specialty that is critically needed in wartime'' for ''training in such specialties'' and ''health care education and training'' for ''training in certain health care specialties''.

Subsec. (b). Pub. L. 107–107, § 539(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–107, § 539(b)(1), (c)(1), redesignated subsec. (b) as (c) and inserted ''Wartime'' after ''Critical'' in heading. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 107–107, § 539(c)(2), inserted ''or has been appointed as a medical or dental officer in the Reserve of the armed force concerned'' before semicolon at end.

Subsec. (c)(2)(A). Pub. L. 107–107, § 539(e), substituted ''subsection (f)'' for ''subsection (e)''.

Subsec. (c)(2)(D). Pub. L. 107–107, § 539(d), substituted ''one year in the Ready Reserve for each six months'' for ''two years in the Ready Reserve for each year''.

Subsec. (d). Pub. L. 107–107, § 539(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(A). Pub. L. 107–107, § 539(e), substituted ''subsection (f)'' for ''subsection (e)''.

Subsec. (d)(2)(D). Pub. L. 107–107, § 539(d), substituted ''one year in the Ready Reserve for each six months'' for ''two years in the Ready Reserve for each year''.

Subsecs. (e), (f). Pub. L. 107–107, § 539(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsec. (b). Pub. L. 104–106, § 736(1), inserted ''and Dentists'' in heading.

Subsec. (b)(1)(A). Pub. L. 104–106, § 736(2), inserted ''or dental school'' after ''medical school''.

Subsec. (b)(1)(B). Pub. L. 104–106, § 736(3), inserted ''or dental officer'' after ''medical officer''.

Subsec. (b)(1)(C). Pub. L. 104–106, § 736(4), substituted ''physicians or dentists in a medical or dental specialty'' for ''physicians in a medical specialty''.

Subsec. (b)(2)(B). Pub. L. 104–106, § 736(3), inserted ''or dental officer'' after ''medical officer''.

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].''

§ 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 comply with the repayment provisions of section 303a(e) of title 37.

(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; renumbered § 16203 and amended Pub. L. 103–337, div. A, title XVI, § 1663(c)(4), Oct. 5, 1994, 108 Stat. 3008; Pub. L. 109–163, div. A, title VI, § 687(c)(13), Jan. 6, 2006, 119 Stat. 3335.)

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–163 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''to repay the United States an amount equal to the total amount paid to such person under the program.''

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.

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 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.
16303. Loan repayment program: chaplains serving in the Selected Reserve.

AMENDMENTS

2006—Pub. L. 109–163, div. A, title VI, § 684(b), Jan. 6, 2006, 119 Stat. 3325, added item 16303.

§ 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.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(C) 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) Except as provided in paragraph (3), the Secretary of Defense 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.

(3) In the case of a commitment made by the Secretary of Defense after the date of the enactment of this paragraph to repay a loan under paragraph (1) conditioned upon the performance by the borrower of service as an enlisted member under paragraph (2), the Secretary may repay the loan for service performed by the borrower as an officer (rather than as an enlisted member) in the case of a borrower who, after such commitment is entered into and while performing service as an enlisted member, accepts an appointment or commission as a warrant officer or commissioned officer of the Selected Reserve.

(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, plus the amount of any interest that may accrue during the current year.

(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. For the purposes of this section, any interest that has accrued on the loan for periods before the current year shall be considered as within the total loan amount that shall be repaid.

(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.

(g) The Secretary of Homeland Security may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(Added Pub. L. 103–337, div. A, title XVI, § 1663(d)(1), Oct. 5, 1994, 108 Stat. 3008; amended Pub. L. 104–106, div. A, title X, § 1079(b), Feb. 10, 1996, 110 Stat. 451; Pub. L. 106–65, div. A, title VI, § 676, Oct. 5, 1999, 113 Stat. 676; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 108–136, div. A, title V, § 534, Nov. 24, 2003, 117 Stat. 1474; Pub. L. 108–375, div. A, title V, § 526, Oct. 28, 2004, 118 Stat. 1890.)

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, D, and E of title IV of the Act are classified to parts B (§ 1071 et seq.), C (§ 1087a 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 date of the enactment of this paragraph, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 108–375, which was approved Oct. 28, 2004.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–375, § 526(1), substituted "Except as provided in paragraph (3), the Secretary of Defense may repay loans" for "The Secretary may repay loans".

Subsec. (a)(3). Pub. L. 108–375, § 526(2), added par. (3).

2003—Subsec. (b). Pub. L. 108–136, § 534(1), inserted before period at end ", plus the amount of any interest that may accrue during the current year".

Subsec. (c). Pub. L. 108–136, § 534(2), inserted last sentence.

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

1999—Subsec. (g). Pub. L. 106–65 added subsec. (g).

1996—Subsec. (a)(1). Pub. L. 104–106 struck out "or" at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE

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.

§ 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) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(3) a loan made under part E of such title (20 U.S.C. 1087aa et seq.) after October 1, 1975;

(4) 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

(5) a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in 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, or is enrolled in a program of education leading to 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 $20,000 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 $50,000.

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before January 1, 2008.

(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; Pub. L. 104–106, div. A, title VI, § 613(h), title X, § 1079(c), Feb. 10, 1996, 110 Stat. 360, 452; Pub. L. 104–201, div. A, title VI, § 613(g), Sept. 23, 1996, 110 Stat. 2544; Pub. L. 105–85, div. A, title VI, § 611(h), Nov. 18, 1997, 111 Stat. 1785; Pub. L. 105–261, div. A, title VI, §§ 611(h), 654, Oct. 17, 1998, 112 Stat. 2039, 2052; Pub. L. 106–65, div. A, title VI, § 611(h), Oct. 5, 1999, 113 Stat. 650; Pub. L. 106–398, § 1 [[div. A], title VI, § 621(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151; Pub. L. 107–107, div. A, title VI, § 611(h), Dec. 28, 2001, 115 Stat. 1135; Pub. L. 107–314, div. A, title VI, § 612(b), Dec. 2, 2002, 116 Stat. 2567; Pub. L. 108–136, div. A, title VI, § 612(b), Nov. 24, 2003, 117 Stat. 1501; Pub. L. 108–375, div. A, title VI, §§ 612(b), 662, Oct. 28, 2004, 118 Stat. 1947, 1974; Pub. L. 109–163, div. A, title VI, § 622(b), Jan. 6, 2006, 119 Stat. 3294; Pub. L. 109–364, div. A, title VI, § 612(b), Oct. 17, 2006, 120 Stat. 2248.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1) to (3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B, D, and E of title IV of the Act are classified to parts B (§ 1071 et seq.), C (§ 1087a 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)(4), 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

2006—Subsec. (d). Pub. L. 109–364 substituted ''January 1, 2008'' for ''January 1, 2007''.

Pub. L. 109–163 substituted ''January 1, 2007'' for ''January 1, 2006''.

2004—Subsec. (a)(5). Pub. L. 108–375, § 662, inserted ''a basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in'' after ''regarding''.

Subsec. (d). Pub. L. 108–375, § 612(b), substituted ''January 1, 2006'' for ''January 1, 2005''.

2003—Subsec. (d). Pub. L. 108–136 substituted ''January 1, 2005'' for ''January 1, 2004''.

2002—Subsec. (d). Pub. L. 107–314 substituted ''January 1, 2004'' for ''January 1, 2003''.

2001—Subsec. (d). Pub. L. 107–107 substituted ''January 1, 2003'' for ''January 1, 2002''.

2000—Subsec. (d). Pub. L. 106–398 substituted ''January 1, 2002'' for ''January 1, 2001''.

1999—Subsec. (d). Pub. L. 106–65 substituted ''January 1, 2001'' for ''January 1, 2000''.

1998—Subsec. (b)(2). Pub. L. 105–261, § 654(a), inserted '', or is enrolled in a program of education leading to professional qualifications,'' after ''possesses professional qualifications''.

Subsec. (c)(2). Pub. L. 105–261, § 654(b)(1), substituted ''$20,000'' for ''$3,000''.

Subsec. (c)(3). Pub. L. 105–261, § 654(b)(2), substituted ''$50,000'' for ''$20,000''.

Subsec. (d). Pub. L. 105–261, § 611(h), substituted ''January 1, 2000'' for ''October 1, 1999''.

1997—Subsec. (d). Pub. L. 105–85 substituted ''October 1, 1999'' for ''October 1, 1998''.

1996—Subsec. (a)(2) to (5). Pub. L. 104–106, § 1079(c), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsec. (d). Pub. L. 104–201 substituted ''October 1, 1998'' for ''October 1, 1997''.

Pub. L. 104–106, § 613(h), substituted ''October 1, 1997'' for ''October 1, 1996''.

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.''

§ 16303. Loan repayment program: chaplains serving in the Selected Reserve

(a) AUTHORITY TO REPAY EDUCATION LOANS.—For purposes of maintaining adequate numbers of chaplains in the Selected Reserve, the Secretary concerned may repay a loan that was obtained by a person who—

(1) satisfies the requirements for accessioning and commissioning of chaplains, as prescribed in regulations;

(2) holds, or is fully qualified for, an appointment as a chaplain in a reserve component of an armed force; and

(3) signs a written agreement with the Secretary concerned to serve not less than three years in the Selected Reserve.

(b) EXCEPTION FOR CHAPLAIN CANDIDATE PROGRAM.—A person accessioned into the Chaplain Candidate Program is not eligible for the repayment of a loan under subsection (a).

(c) LOAN REPAYMENT PROCESS; MAXIMUM AMOUNT.—(1) Subject to paragraph (2), the repayment of a loan under subsection (a) may consist of the payment of the principal, interest, and related expenses of the loan.

(2) The amount of any repayment of a loan made under subsection (a) on behalf of a person may not exceed $20,000 for each three year period of obligated service that the person agrees to serve in an agreement described in subsection (a)(3). Of such amount, not more than an amount equal to 50 percent of such amount may be paid before the completion by the person of the first year of obligated service pursuant to the agreement. The balance of such amount shall be payable at such time or times as are prescribed in regulations.

(d) EFFECT OF FAILURE TO COMPLETE OBLIGATION.—A person on whose behalf a loan is repaid under subsection (a) who fails to commence or complete the period of obligated service specified in the agreement described in subsection (a)(3) shall be subject to the repayment provisions of section 303a(e) of title 37.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added and amended Pub. L. 109–163, div. A, title VI, §§ 684(a), 687(c)(14), Jan. 6, 2006, 119 Stat. 3324, 3335.)

AMENDMENTS

2006—Subsec. (d). Pub. L. 109–163, § 687(c)(14), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''If a person on whose behalf a loan is repaid under subsection (a) fails to commence or complete the period of obligated service specified in the agreement described in subsection (a)(3), the Secretary concerned may require the person to pay the United States an amount equal to the amount of the loan repayments made on behalf of the person in connection with the agreement.''

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

CHAPTER 1611—OTHER EDUCATIONAL ASSISTANCE PROGRAMS

Sec.
16401. Marine Corps Platoon Leaders Class: college tuition assistance program.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title V, § 533(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–112, substituted ''Class: college tuition assistance program'' for ''Class program: officer candidates pursuing degrees'' in item 16401.

§ 16401. Marine Corps Platoon Leaders Class: college tuition assistance program

(a) AUTHORITY.—The Secretary of the Navy may provide financial assistance to an eligible

member of the Marine Corps Reserve for expenses of the member while the member is pursuing on a full-time basis at an institution of higher education a program of education approved by the Secretary that leads to—

(1) a baccalaureate degree in less than five academic years; or

(2) a doctor of jurisprudence or bachelor of laws degree in not more than four academic years.

(b) ELIGIBILITY.—(1) To be eligible for financial assistance under this section, a member of the Marine Corps Reserve must—

(A) be a member of the Marine Corps Platoon Leaders Class program and have successfully completed one six-week (or longer) increment of military training required under that program;

(B) be enrolled on a full-time basis in a program of education referred to in subsection (a) at any institution of higher education; and

(C) enter into a written agreement with the Secretary described in paragraph (2).

(2) A written agreement referred to in paragraph (1)(C) is an agreement between the member and the Secretary in which the member agrees—

(A) to accept an appointment as a commissioned officer in the Marine Corps, if tendered by the President;

(B) to serve on active duty for at least five years; and

(C) under such terms and conditions as shall be prescribed by the Secretary, to serve in the Marine Corps Reserve until the eighth anniversary of the date of the appointment.

(c) COVERED EXPENSES.—Expenses for which financial assistance may be provided under this section are—

(1) tuition and fees charged by the institution of higher education involved;

(2) the cost of books; and

(3) in the case of a program of education leading to a baccalaureate degree, laboratory expenses.

(d) AMOUNT.—The amount of financial assistance provided to a member under this section shall be prescribed by the Secretary, but may not exceed $5,200 for any academic year.

(e) LIMITATIONS.—(1) Financial assistance may be provided to a member under this section only for three consecutive academic years.

(2) Not more than 1,200 members may participate in the financial assistance program under this section in any academic year.

(f) FAILURE TO COMPLETE PROGRAM.—(1) An enlisted member who receives financial assistance under this section may be ordered to active duty in the Marine Corps by the Secretary to serve in an appropriate enlisted grade for such period as the Secretary prescribes, but not for more than four years, and an officer who receives financial assistance under this section shall be subject to the repayment provisions of section 303a(e) of title 37, if the member—

(A) completes the military and academic requirements of the Marine Corps Platoon Leaders Class program and refuses to accept an appointment as a commissioned officer in the Marine Corps when offered or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered;

(B) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program; or

(C) is disenrolled from the Marine Corps Platoon Leaders Class program for failure to maintain eligibility for an original appointment as a commissioned officer under section 532 of this title.

(2) Any requirement to repay any portion of financial assistance received under this section shall be administered under the regulations issued under section 303a(e) of title 37. The Secretary of the Navy may waive the requirements of paragraph (1) in the case of a person who—

(A) becomes unqualified to serve on active duty as an officer due to a circumstance not within the control of the person;

(B) is not physically qualified for appointment under section 532 of this title and later is determined by the Secretary of the Navy under section 505 of this title to be unqualified for service as an enlisted member of the Marine Corps due to a physical or medical condition that was not the result of misconduct or grossly negligent conduct; or

(C) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program due to a circumstance not within the control of the person.

(g) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term ''institution of higher education'' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(Added Pub. L. 106–65, div. A, title V, § 551(a)(1), Oct. 5, 1999, 113 Stat. 612; amended Pub. L. 106–398, § 1 [[div. A], title V, § 533(a)–(d), (f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110, 1654A–111; Pub. L. 109–163, div. A, title VI, § 687(c)(15), Jan. 6, 2006, 119 Stat. 3336.)

AMENDMENTS

2006—Subsec. (f)(1). Pub. L. 109–163, § 687(c)(15)(A), substituted ''shall be subject to the repayment provisions of section 303a(e) of title 37'' for ''may be required to repay the full amount of financial assistance'' in introductory provisions.

Subsec. (f)(2). Pub. L. 109–163, § 687(c)(15)(B), inserted ''Any requirement to repay any portion of financial assistance received under this section shall be administered under the regulations issued under section 303a(e) of title 37.'' before ''The Secretary of the Navy may waive'' in introductory provisions.

2000—Pub. L. 106–398, § 1 [[div. A], title V, § 533(f)(1)], substituted ''Class: college tuition assistance program'' for ''Class program: officer candidates pursuing degrees'' in section catchline.

Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title V, § 533(a)(1), (f)(2)], struck out ''for Financial Assistance Program'' after ''Authority'' in heading and ''enlisted'' after ''an eligible'' in introductory provisions.

Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 533(c)], substituted ''four'' for ''three''.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 533(a)(2)(A)], substituted ''a member'' for ''an enlisted member'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 533(a)(2)(B)], substituted ''a member of'' for ''an officer candidate in''.

Subsec. (b)(1)(B). Pub. L. 106–398, § 1 [[div. A], title V, § 533(b)(1)(A), (B)], redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''meet the applicable age requirement specified in paragraph (2);''.

Subsec. (b)(1)(C), (D). Pub. L. 106–398, § 1 [[div. A], title V, § 533(b)(1)(B), (C)], redesignated subpar. (D) as (C) and substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (b)(2), (3). Pub. L. 106–398, § 1 [[div. A], title V, § 533(b)(2)–(4)], redesignated par. (3) as (2), substituted ''paragraph (1)(C)'' for ''paragraph (1)(D)'' in introductory provisions, and struck out former par. (2) which read as follows:

''(2)(A) In the case of a member pursuing a baccalaureate degree, the member meets the age requirements of this paragraph if the member will be under 27 years of age on June 30 of the calendar year in which the member is projected to be eligible for appointment as a commissioned officer in the Marine Corps through the Marine Corps Platoon Leaders Class program, except that if the member has served on active duty, the member may, on such date, be any age under 30 years that exceeds 27 years by a number of months that is not more than the number of months that the member served on active duty.

''(B) In the case of a member pursuing a doctor of jurisprudence or bachelor of laws degree, the member meets the age requirements of this paragraph if the member will be under 31 years of age on June 30 of the calendar year in which the member is projected to be eligible for appointment as a commissioned officer in the Marine Corps through the Marine Corps Platoon Leaders Class program, except that if the member has served on active duty, the member may, on such date, be any age under 35 years that exceeds 31 years by a number of months that is not more than the number of months that the member served on active duty.''

Subsec. (f)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 533(d)(1)(A), (B)], in introductory provisions, substituted ''An enlisted member who'' for ''A member who'' and inserted ''and an officer who receives financial assistance under this section may be required to repay the full amount of financial assistance,'' after ''for more than four years,''.

Subsec. (f)(1)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 533(d)(1)(C)], inserted ''or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered'' after ''when offered''.

Subsec. (f)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 533(d)(2)], added par. (2) and struck out former par. (2) which read as follows: ''The Secretary of the Navy may waive the obligated service under paragraph (1) of a person who is not physically qualified for appointment under section 532 of this title and later is determined by the Secretary of the Navy under section 505 of this title to be unqualified for service as an enlisted member of the Marine Corps due to a physical or medical condition that was not the result of misconduct or grossly negligent conduct.''

SAVINGS PROVISION

For savings provision relating to payment or repayment of any bonus, incentive pay, special pay, or similar pay obligated to be paid before Apr. 1, 2006, under a provision of this section amended by section 687(c) of Pub. L. 109–163, see section 687(f) of Pub. L. 109–163, set out as a note under section 510 of this title.

TRANSITION PROVISION

Pub. L. 106–65, div. A, title V, § 551(d), Oct. 5, 1999, 113 Stat. 614, provided that:

''(1) An enlisted member of the Marine Corps Reserve selected for training as an officer candidate under section 12209 of title 10, United States Code, before implementation of a financial assistance program under section 16401 of such title (as added by subsection (a)) may, upon application, participate in the financial assistance program established under section 16401 of such title (as added by subsection (a)) if the member—

''(A) is eligible for financial assistance under such section 16401;

''(B) submits a request for the financial assistance to the Secretary of the Navy not later than 180 days after the date on which the Secretary establishes the financial assistance program; and

''(C) enters into a written agreement described in subsection (b)(3) of such section.

''(2) Section 205(f) of title 37, United States Code, as added by subsection (c), applies to a member referred to in paragraph (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

Sec.	
18231.	Purpose.
18232.	Definitions.
18233.	Acquisition.
18233a.	Notice and wait requirements for certain projects.
18233b.	Authority to carry out small projects with operation and maintenance funds.
18234.	Location and use.
18235.	Administration; other use permitted by Secretary.
18236.	Contributions to States; other use permitted by States.
18237.	Supervision of construction: compliance with State law.
18238.	Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.
18239.	Waiver of certain restrictions.
18240.	Acquisition of facilities by exchange.

AMENDMENTS

2004—Pub. L. 108–375, div. B, title XXVIII, §§ 2808(c), 2809(a)(2), Oct. 28, 2004, 118 Stat. 2125, 2127, substituted ''Notice and wait requirements for certain projects'' for ''Limitation on certain projects; authority to carry out small projects with operation and maintenance funds'' in item 18233a and added items 18233b and 18240.

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.

§ 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 main-

tenance 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; Pub. L. 85–215, § 1, Aug. 29, 1957, 71 Stat. 489; renumbered § 18231, Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), Oct. 5, 1994, 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.

§ 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, readiness center, 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 terms ''armory'' and ''readiness center'' mean a structure that houses one or more units of a reserve component and is used for training and administering those units. Such terms include 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; Pub. L. 85–861, § 1(36), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 97–214, § 3(d)(1), July 12, 1982, 96 Stat. 170; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered § 18232, Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2807(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

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

2000—Par. (2)(B). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2807(b)(1)], substituted ''armory, readiness center, or other structure'' for ''armory or other structure''.

Par. (3). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2807(a)], substituted ''The terms 'armory' and 'readiness center' mean'' for ''The term 'armory' means'' and ''Such terms include'' for ''It includes''.

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, design, 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 or gift.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, § 2233; Pub. L. 85–685, title VI, § 601(1), (2), Aug. 20, 1958, 72 Stat. 664; Pub. L. 85–861, § 1(37)–(39), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 96–125, title VII, § 703, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–99, title VIII, §§ 803, 804, Dec. 23, 1981, 95 Stat. 1380, 1381; Pub. L. 97–214, §§ 3(a), (d)(2), (e)(1), 10(a)(2), July 12, 1982, 96 Stat. 169, 170, 175; Pub. L. 98–407, title VII, § 703(a), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 98–525, title XIV, § 1405(34), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–167, title VII, § 702(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 102–190, div. B, title XXVIII, § 2801, Dec. 5, 1991, 105 Stat. 1537; renumbered § 18233 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (4), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 106–65, div. B, title XXVIII, § 2805, Oct. 5, 1999, 113 Stat. 850; Pub. L. 108–375, div. B, title XXVIII, § 2809(b), Oct. 28, 2004, 118 Stat. 2127; Pub. L. 109–364, div. A, title X, § 1071(a)(42), Oct. 17, 2006, 120 Stat. 2400.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
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

2006—Subsec. (f)(2). Pub. L. 109–364 struck out comma after ''purchase''.

2004—Subsec. (f)(2). Pub. L. 108–375 substituted ''or gift'' for ''gift, exchange of Government-owned land, or otherwise''.

1999—Subsec. (f)(1). Pub. L. 106–65 inserted ''design,'' after ''planning,''.

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 incident 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.

§ 18233a. Notice and wait requirements for certain projects

(a) CONGRESSIONAL NOTIFICATION.—Except as provided in subsection (b), an expenditure or contribution in an amount in excess of $750,000 may not be made under section 18233 of this title for any facility until—

(1) the Secretary of Defense has notified the congressional defense committees of the location, nature, and estimated cost of the facility; and

(2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(b) CERTAIN EXPENDITURES OR CONTRIBUTIONS EXEMPTED.—Subsection (a) does not apply to expenditures or contributions for the following:

(1) Facilities acquired by lease.

(2) 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—

(A) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and

(B) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than the lesser of the following:

(i) 25 percent.

(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.

(3) A repair project (as that term is defined in section 2811(e) of this title) that costs less than $7,500,000.

(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, subdiv. 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; Pub. L. 104–106, div. A, title XV, § 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 104–201, div. B, title XXVIII, § 2801(b), (c), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 106–65, div. A, title X, § 1067(1), div. B, title XXVIII, § 2806, Oct. 5, 1999, 113 Stat. 774, 850; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(22)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 108–375, div. B, title XXVIII, § 2808(a), Oct. 28, 2004, 118 Stat. 2124.)

AMENDMENTS

2004—Pub. L. 108–375 amended section generally, substituting provisions relating to notice and wait requirements for certain projects for provisions relating to limitation on certain projects and authority to carry out small projects with operation and maintenance funds.

2000—Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(22)(A)], substituted ''section 2805(c)(1)(A)'' for ''section 2805(c)(1)''.

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(22)(B)], substituted ''section 2805(c)(1)(B)'' for ''section 2805(c)(2)''.

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

Subsec. (a)(2)(C). Pub. L. 106–65, § 2806(a), added subpar. (C).

Subsec. (b). Pub. L. 106–65, § 2806(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Under such regulations as the Secretary of Defense may prescribe, a project authorized under section 18233(a) of this title that costs $500,000 or less may be carried out with funds available for operations and maintenance.''

1996—Subsec. (a)(1). Pub. L. 104–201, § 2801(c), substituted ''$1,500,000'' for ''$400,000''.

Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsec. (b). Pub. L. 104–201, § 2801(b), substituted ''$500,000'' for ''$300,000''.

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).

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.

§ 18233b. Authority to carry out small projects with operation and maintenance funds

Under such regulations as the Secretary of Defense may prescribe, the Secretary may expend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title that costs not more than—

(1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

(2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.

(Added Pub. L. 108–375, div. B, title XXVIII, § 2808(b), Oct. 28, 2004, 118 Stat. 2125.)

§ 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 Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (6), Oct. 5, 1994, 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.

§ 18235. Administration; other use permitted by Secretary

(a) The Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of 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 Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (7), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

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

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

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)''.

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.

§ 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 Committee on Armed Services of the Senate and the Committee on Armed Services of 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 or readiness center 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; Pub. L. 85–861, § 1(40), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 97–214, § 3(d)(2), (3), (e)(2), July 12, 1982, 96 Stat. 170; Pub. L. 99–167, title VII, § 702(b), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. A, title XIII, § 1343(a)(11), Nov. 14, 1986, 100 Stat. 3993; renumbered § 18236 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (8), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104–106, div. A, title XV, §§ 1501(b)(36), 1502(a)(2), Feb. 10, 1996, 110 Stat. 498, 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2807(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

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, § 4(d), (e), 64 Stat. 830.
2236(b)	50:883(d) (less 1st sentence).	
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, § 1(e), 69 Stat. 593.
2236(b)	50:883(d) (less 1st sentence).	

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

2000—Subsec. (b). Pub. L. 106–398 inserted ''or readiness center'' after ''armory'' in introductory provisions.

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (a). Pub. L. 104–106, § 1502(a)(2), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (b)(1). Pub. L. 104–106, § 1501(b)(36), substituted ''18233(e)'' for ''2233(e)''.

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)(2). Pub. L. 103–337, § 1664(b)(8)(B)(ii), which directed amendment of par. (2) by substituting ''section 18233(e)'' for ''section 2233(e)'', could not be executed because the words ''section 2233(e)'' did not appear in par. (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''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(36) of Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective 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.

§ 18237. Supervision of construction: compliance with State law

(a) Any construction, expansion, rehabilitation, or conversion under section 18233(a)(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 18233(a) 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; Pub. L. 85–861, § 1(41), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 89–718, § 19, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 97–214, § 3(d)(2), July 12, 1982, 96 Stat. 170; renumbered § 18237 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (9), div. B, title XXVIII, § 2852, Oct. 5, 1994, 108 Stat. 3010, 3011, 3072; Pub. L. 104–106, div. A, title XV, § 1501(b)(37), Feb. 10, 1996, 110 Stat. 498.)

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).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, § 1501(37)(A), substituted ''18233(a)(1)'' for ''2233(a)(1)''.

Subsec. (b). Pub. L. 104–106, § 1501(37)(B), substituted ''18233(a)'' for ''2233(a)''.

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)''.

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 1996 AMENDMENT

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

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by 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; Pub. L. 85–861, § 1(43), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 97–214, § 3(d)(4), July 12, 1982, 96 Stat. 170; renumbered § 18238, Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), Oct. 5, 1994, 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.

§ 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 3111 of title 40; 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; Pub. L. 107–217, § 3(b)(42), Aug. 21, 2002, 116 Stat. 1298.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–217 substituted ''section 3111 of title 40'' for ''section 355 of the Revised Statutes (40 U.S.C. 255)''.

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.

§ 18240. Acquisition of facilities by exchange

(a) EXCHANGE AUTHORITY.—In addition to the acquisition authority provided by section 18233 of this title, the Secretary of Defense may authorize the Secretary of a military department to acquire a facility, or addition to an existing facility, needed to satisfy military requirements

for a reserve component by carrying out an exchange of an existing facility under the control of that Secretary through an agreement with a State, local government, local authority, or private entity. The acquisition of a facility or an addition to an existing facility under this section may include the acquisition of utilities, equipment, and furnishings for the facility.

(b) FACILITIES ELIGIBLE FOR EXCHANGE.—Only a facility of a reserve component that is not excess property (as defined in section 102(3) of title 40) may be exchanged using the authority provided by this section.

(c) EQUAL VALUE EXCHANGE.—In any exchange carried out using the authority provided by this section, the value of the replacement facility, or addition to an existing facility, including any utilities, equipment, and furnishings, to be acquired by the United States shall be at least equal to the fair market value of the facility conveyed by the United States under the agreement. If the values are unequal, the values may not be equalized by any payment of cash consideration by either party to the agreement.

(d) REQUIREMENTS FOR REPLACEMENT FACILITIES.—The Secretary of a military department may not accept a replacement facility, or addition to an existing facility, to be acquired by the United States in an exchange carried out using the authority provided by this section until that Secretary determines that the facility or addition—

(1) is complete and usable, fully functional, and ready for occupancy;

(2) satisfies all operational requirements; and

(3) meets all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

(e) CONSULTATION REQUIREMENTS.—The Secretary of a military department authorized to enter into an agreement under subsection (a) to convey an existing facility under the control of that Secretary by exchange shall consult with representatives of other reserve components to evaluate—

(1) the value of using the facility to meet the military requirements of another reserve component, instead of conveying the facility under this section; and

(2) the feasibility of using the conveyance of the facility to acquire a facility, or an addition to an existing facility, that would be jointly used by more than one reserve component or unit.

(f) ADVANCE NOTICE OF PROPOSED EXCHANGE.—(1) When a decision is made to enter into an agreement under subsection (a) to exchange a facility using the authority provided by this section, the Secretary of the military department authorized to enter into the agreement shall submit to the congressional defense committees a report on the proposed agreement. The report shall include the following:

(A) A description of the agreement, including the terms and conditions of the agreement, the parties to be involved in the agreement, the origin of the proposal that lead to the agreement, the intended use of the facility to be conveyed by the United States under the agreement, and any costs to be incurred by the United States to make the exchange under the agreement.

(B) A description of the facility to be conveyed by the United States under the agreement, including the current condition and fair market value of the facility, and a description of the method by which the fair market value of the facility was determined.

(C) Information on the facility, or addition to an existing facility, to be acquired by the United States under the agreement and the intended use of the facility or addition, which shall meet requirements for information provided to Congress for military construction projects to obtain a similar facility or addition to an existing facility.

(D) A certification that the Secretary complied with the consultation requirements under subsection (e).

(E) A certification that the conveyance of the facility under the agreement is in the best interests of the United States and that the Secretary used competitive procedures to the maximum extent practicable to protect the interests of the United States.

(2) The agreement described in a report prepared under paragraph (1) may be entered into, and the exchange covered by the agreement made, only after the end of the 30-day period beginning on the date the report is received by the congressional defense committees or, if earlier, the end of the 21-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

(3) Section 2662 of this title shall not apply to an exchange carried out using the authority provided by this section.

(g) RELATION TO OTHER MILITARY CONSTRUCTION REQUIREMENTS.—The acquisition of a facility, or an addition to an existing facility, using the authority provided by this section shall not be treated as a military construction project for which an authorization is required by section 2802 of this title.

(Added Pub. L. 108–375, div. B, title XXVIII, § 2809(a)(1), Oct. 28, 2004, 118 Stat. 2125; amended Pub. L. 109–163, div. B, title XXVIII, § 2808(a), Jan. 6, 2006, 119 Stat. 3508.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, § 2808(a)(1), inserted at end ''The acquisition of a facility or an addition to an existing facility under this section may include the acquisition of utilities, equipment, and furnishings for the facility.''

Subsec. (c). Pub. L. 109–163, § 2808(a)(2), inserted ''including any utilities, equipment, and furnishings, to be'' after ''existing facility,''.

TEMPORARY AUTHORITY TO INCLUDE CASH EQUALIZATION PAYMENTS IN EXCHANGE

Pub. L. 108–375, div. B, title XXVIII, § 2809(c), Oct. 28, 2004, 118 Stat. 2127, as amended by Pub. L. 109–163, div. B, title XXVIII, § 2808(b), Jan. 6, 2006, 119 Stat. 3508, provided that:

''(1) Notwithstanding subsection (c) of section 18240 of title 10, United States Code, as added by subsection (a), the Secretary of Defense may authorize the Secretary of a military department, as part of an exchange agreement under such section, to make or accept a cash

equalization payment if the value of the facility, or addition to an existing facility, including any utilities, equipment, and furnishings, to be acquired by the United States under the agreement is not equal to the fair market value of the facility to be conveyed by the United States under the agreement. All other requirements of such section shall continue to apply to the exchange.

''(2) Cash equalization payments received by the Secretary of a military department under this subsection shall be deposited in a separate account in the Treasury. Amounts in the account shall be available to the Secretary of Defense, without further appropriation and until expended, for transfer to the Secretary of a military department—

''(A) to make any cash equalization payments required to be made by the United States in connection with an exchange agreement covered by this subsection, and the account shall be the only source for such payments; and

''(B) to cover costs associated with the maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of facilities, and additions to existing facilities, acquired using an exchange agreement covered by this subsection.

''(3) Not more than 15 exchange agreements under section 18240 of title 10, United States Code, may include the exception for cash equalization payments authorized by this subsection. Of those 15 exchange agreements, not more than eight may be for the same reserve component.

''(4) In this section, the term 'facility' has the meaning given that term in section 18232(2) of title 10, United States Code.

''(5) No cash equalization payment may be made or accepted under the authority of this subsection after September 30, 2007. Except as otherwise specifically authorized by law, the authority provided by this subsection to make or accept cash equalization payments in connection with the acquisition or disposal of facilities of the reserve components is the sole authority available in law to the Secretary of Defense or the Secretary of a military department for that purpose.

''(6) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the exercise of the authority provided by this subsection. The report shall include the following:

''(A) A description of the exchange agreements under section 18240 of title 10, United States Code, that included the authority to make or accept cash equalization payments.

''(B) A description of the analysis and criteria used to select such agreements for inclusion of the authority to make or accept cash equalization payments.

''(C) An assessment of the utility to the Department of Defense of the authority, including recommendations for modifications of such authority in order to enhance the utility of such authority for the Department.

''(D) An assessment of interest in the future use of the authority, in the event the authority is extended.

''(E) An assessment of the advisability of making the authority, including any modifications of the authority recommended under subparagraph (C), permanent.''

CHAPTER 1805—MISCELLANEOUS PROVISIONS

Sec.
18501. Reserve components: personnel and logistic support by military departments.
18502. Reserve components: supplies, services, and facilities.
18505. Reserves traveling for inactive-duty training: space-required travel on military aircraft.
[18506. Repealed.]

AMENDMENTS

2006—Pub. L. 109–163, div. A, title V, § 589(b)(1), Jan. 6, 2006, 119 Stat. 3279, struck out item 18506 ''Recruitment and retention: availability of funds for recognition items for Army Reserve personnel''.

2004—Pub. L. 108–375, div. A, title V, § 520(a)(2), Oct. 28, 2004, 118 Stat. 1886, added item 18506.

2001—Pub. L. 107–107, div. A, title V, § 518(b), Dec. 28, 2001, 115 Stat. 1096, struck out ''annual training duty or'' before ''inactive-duty training:'' in item 18505.

2000—Pub. L. 106–398, § 1 [[div. A], title III, § 384(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–87, substituted ''Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft'' for ''Reserves traveling to inactive-duty training OCONUS: authority for space-required travel'' in item 18505.

1999—Pub. L. 106–65, div. A, title V, § 517(a)(2), Oct. 5, 1999, 113 Stat. 595, added item 18505.

§ 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 Homeland Security 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; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

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).

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

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

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).

§ 18505.[1] Reserves traveling for inactive-duty training: space-required travel on military aircraft

(a) A member of a reserve component traveling for inactive-duty training (including a place other than the place of the member's unit training assembly if the member is performing inactive-duty training in another location) may travel in a space-required status on aircraft of the armed forces between the member's home and the place of the inactive-duty training.

(b) A member traveling in a space-required status on any such aircraft under subsection (a) is not authorized to receive travel, transportation, or per diem allowances in connection with that travel.

(Added Pub. L. 106–65, div. A, title V, § 517(a)(1), Oct. 5, 1999, 113 Stat. 594; amended Pub. L. 106–398, § 1 [[div. A], title III, § 384(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–87; Pub. L. 107–107, div. A, title V, § 518, Dec. 28, 2001, 115 Stat. 1096.)

AMENDMENTS

2001—Pub. L. 107–107, § 518(b), struck out ''annual training duty or'' before ''inactive-duty training:'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 518(a), struck out ''annual training duty or'' before ''inactive-duty training'' wherever appearing.

2000—Pub. L. 106–398, § 1 [[div. A], title III, § 384(b)(1)], substituted ''Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft'' for ''Reserves traveling to inactive-duty training OCONUS: authority for space-required travel'' as section catchline.

Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title III, § 384(a)], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of a member of a reserve component whose place of inactive-duty training is outside the contiguous States (including a place other than the place of the member's unit training assembly if the member is performing the inactive-duty training in another location), the member may travel in a space-required status on aircraft of the armed forces between the member's home and the place of such training if there is no transportation between those locations by means of road or railroad (or a combination of road and railroad).''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, § 517(c), Oct. 5, 1999, 113 Stat. 595, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to travel commencing on or after the date of the enactment of this Act [Oct. 5, 1999].''

[§ 18506. Repealed. Pub. L. 109–163, div. A, title V, § 589(b)(1), Jan. 6, 2006, 119 Stat. 3279]

Section, added Pub. L. 108–375, div. A, title V, § 520(a)(1), Oct. 28, 2004, 118 Stat. 1886, related to availability of funds for recognition items for Army Reserve personnel.

[1] So in original. No sections 18503 and 18504 have been enacted.