

Subsec. (c)(1). Pub. L. 96-513, §336(c), substituted “determined under section 1370 of this title” for “in which he was serving at the time of retirement”.

Subsec. (c)(2). Pub. L. 96-513, §513(17), substituted “September 8, 1980” for “the date of the enactment of the Department of Defense Authorization Act, 1981” wherever appearing.

Pub. L. 96-342, designated existing provisions as subpar. (A), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

Subsec. (d). Pub. L. 96-513, §336(d), provided that Navy lieutenants designated for limited duty and Marine Corps captains similarly designated who were considered as having failed of selection for promotion were to be honorably discharged on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which he was considered as having failed of selection.

Subsec. (e). Pub. L. 96-513, §336(d), designated existing provisions as par. (1), provided that Navy lieutenants (junior grade) designated for limited duty and Marine Corps first lieutenants similarly designated who were considered as having failed of selection for promotion were to be honorably discharged on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which he was considered as having failed of selection, and added par. (2).

Subsec. (f). Pub. L. 96-513, §336(e), (f), redesignated subsec. (g) as (f), substituted “discharge under subsection (d)” for “retirement or discharge under subsections (b), (d)” and “instead of being discharged” for “instead of being retired or discharged” in two places, and struck out former subsec. (f) authorizing a lump-sum severance payment to certain discharged officers.

Subsecs. (g) to (j). Pub. L. 96-513, §336(f)–(h), added subsecs. (h) to (j) and redesignated existing subsecs. (g) and (h) as (f) and (g), respectively.

1963—Subsec. (c)(2). Pub. L. 88-132 substituted “of” for “to which he would be entitled if serving on active duty in” after “2½ percent of the basic pay”.

1962—Subsec. (f). Pub. L. 87-509 limited the lump-sum payment to not more than \$15,000.

1960—Subsec. (d). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

Subsec. (e). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time.

1958—Subsec. (c)(2). Pub. L. 85-422 substituted “that may be credited to him under section 1405 of this title” for “creditable for basic pay”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 336 of Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, and amendment by section 513(17) of Pub. L. 96-513 effective Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under

section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-422 effective June 1, 1958, see section 9 of Pub. L. 85-422.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For transition provisions relating to limited-duty officers of the Regular Navy or Regular Marine Corps, see section 616 of Pub. L. 96-513, set out as a note under section 611 of this title.

[§§ 6384 to 6388. Repealed. Pub. L. 96-513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section 6384, acts Aug. 10, 1956, ch. 1041, 70A Stat. 407; July 12, 1960, Pub. L. 86-616, §5(3), 74 Stat. 390; June 28, 1962, Pub. L. 87-509, §4(b), 76 Stat. 121; Sept. 30, 1966, Pub. L. 89-609, §1(18), (19), 80 Stat. 853; Sept. 19, 1978, Pub. L. 95-377, §8(a), 92 Stat. 721, related to discharge of Regular Navy and Regular Marine Corps officers having less than 20 years service for unsatisfactory performance of duty. See section 1181 et seq. of this title.

Section 6385, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Sept. 19, 1978, Pub. L. 95-377, §8(b), (c), 92 Stat. 721, provided that for purposes of involuntary retirement, separation, or furlough, an officer serving in a grade to which he was appointed under former sections 5231, 5232, 5787 or 5787d of this title was to be considered as serving in a grade he would have held had it not been for such appointment. See section 627 et seq. of this title.

Section 6386, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Apr. 21, 1976, Pub. L. 94-273, §2(3), 90 Stat. 375, authorized President to suspend certain provisions relating to officers serving in grades of lieutenant and lieutenant (junior grade) in Navy or in grades of captain and first lieutenant in Marine Corps. See section 123(a), (b) of this title.

Section 6387, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Aug. 11, 1959, Pub. L. 86-155, §6, 73 Stat. 337; June 30, 1960, Pub. L. 86-558, 74 Stat. 263; Oct. 13, 1964, Pub. L. 88-647, title III, §301(16), 78 Stat. 1072, related to computation of total commissioned service for regular Navy male line officers and regular Marine Corps male officers.

Section 6388, acts Aug. 10, 1956, ch. 1041, 70A Stat. 409; Aug. 21, 1957, Pub. L. 85-155, title II, §201(20), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89-609, §1(20), (21), 80 Stat. 853; Sept. 20, 1968, Pub. L. 90-502, §1, 82 Stat. 852; Dec. 24, 1970, Pub. L. 91-582, §1, 84 Stat. 1574, related to computation of total commissioned service for certain Regular Navy staff corps officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6389. Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

(a) Subject to section 12645 of this title, an officer in an active status in the Navy Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list may, in the discretion of the Secretary of the Navy, be eliminated from an active status or released from active duty and placed on the reserve active-status list.

(b) An officer who is to be eliminated from an active status under subsection (a) shall, if quali-

fied, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Navy Reserve or the Marine Corps Reserve.

(c)(1) An officer in an active status in the Navy Reserve in the permanent grade of lieutenant commander or commander, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or lieutenant colonel, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Navy Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that specified below for the permanent grade in which he is serving:

Grade		Total commissioned service
Navy	Marine Corps	
Commander	Lieutenant colonel.	28 years.
Lieutenant commander	Major	20 years.

(2) Notwithstanding the first sentence of paragraph (1), the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve, but the duration of such deferment for any individual officer may not be in excess of five years.

(3) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or commander in the Navy Reserve or in the permanent grade of major or lieutenant colonel in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 12732 of this title during the period of such deferment.

(4) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Navy Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Navy Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regu-

lar officer on the active-duty list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W-5.

(Added Pub. L. 85-861, §1(144)(A), Sept. 2, 1958, 72 Stat. 1509; amended Pub. L. 86-559, §1(46), June 30, 1960, 74 Stat. 274; Pub. L. 96-513, title III, §337(a), Dec. 12, 1980, 94 Stat. 2900; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title V, §528(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102-190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103-337, div. A, title XVI, §§1628, 1673(c)(1), Oct. 5, 1994, 108 Stat. 2962, 3016; Pub. L. 104-106, div. A, title XV, §1501(c)(25), Feb. 10, 1996, 110 Stat. 499; Pub. L. 109-163, div. A, title V, §515(b)(1)(M), (3)(C), Jan. 6, 2006, 119 Stat. 3233, 3234.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6389(a)	50:1311(c) (1st sentence).	Sept. 3, 1954, ch. 1257, §411(c) (1st sentence), 68 Stat. 1170.
6389(b)	50:1311(a) (as applicable to 1311(c)).	Sept. 3, 1954, ch. 1257, §411(a) (as applicable to 411(c)), 68 Stat. 1169.
6389(c)	50:1311(c) (2d sentence).	Sept. 3, 1954, ch. 1257, §411(c) (2d sentence), 68 Stat. 1170.
6389(d)	50:1311(c) (less 1st and 2d sentences).	Sept. 3, 1954, ch. 1257, §411(c) (less 1st and 2d sentences), 68 Stat. 1170.
6389(e)	[No source].	[No source].

In subsection (a), the words “who is considered as having twice failed of selection for promotion” are substituted for the words “after failing of selection for promotion * * * a second time” to conform to similar statements in this title. (See the revision note on section 5776.) The words “may be retained in” are omitted as surplusage, since the authority to eliminate such officers from an active status is discretionary with the Secretary.

Subsection (e) is added to avoid conflict with 50:1311(d) and (e), codified in sections 6397 and 6403 of this title. 50:1311(d) and (e) contain special provisions for “women officers” and officers in the Nurse Corps, respectively, so that officers in these categories must be excepted from this section. Women officers appointed under the act of June 24, 1952, ch. 457 (66 Stat. 155; 34 U.S.C. 21e) (codified in section 5581 of this title), are not “women officers” within the meaning of 50:1311(d), however, but are required to be promoted, retired, or eliminated from active status as if they were men. (See the revision note on section 5665 of this title.) The application of this section to these officers is therefore made explicit.

Both men and women are eligible for appointment as reserve officers in the Nurse Corps and are subject to the special provisions relating to that corps.

AMENDMENTS

2006—Pub. L. 109-163, §515(b)(3)(C), substituted “Navy Reserve” for “Naval Reserve” in section catchline.

Pub. L. 109-163, § 515(b)(1)(M), substituted "Navy Reserve" for "Naval Reserve" wherever appearing in text.

1996—Subsec. (c). Pub. L. 104-106 substituted "section 12732" for "section 1332".

1994—Subsec. (a). Pub. L. 103-337, § 1673(c), substituted "12645" for "1005".

Pub. L. 103-337, § 1628(1), inserted "while on the active-duty list" after "to the next higher grade" and "or released from active duty and placed on the reserve active-status list" after "from an active status".

Subsec. (b). Pub. L. 103-337, § 1628(2), struck out "or (f)" after "subsection (a)".

Subsec. (c). Pub. L. 103-337, § 1628(3)(H), designated last sentence as par. (4) and in that sentence substituted "paragraph (1)" for "the first two sentences of this subsection" and struck out "captain or" after "permanent grade of".

Pub. L. 103-337, § 1628(3)(G), designated 4th sentence as par. (3) and in that sentence substituted "paragraph (1)" for "the first two sentences of this subsection".

Pub. L. 103-337, § 1628(3)(F), designated sentence after table as par. (2) and in that sentence substituted "the first sentence of paragraph (1)" for "the first sentence of this subsection".

Pub. L. 103-337, § 1628(3)(E), in table struck out line relating to grades of captain in Navy and colonel in Marine Corps and substituted "28 years" for "26 years".

Pub. L. 103-337, § 1628(3)(D), inserted "while on the active-duty list" after "to the next higher grade" in first sentence.

Pub. L. 103-337, § 1628(3)(C), substituted "major or lieutenant colonel" for "major or above" in two places.

Pub. L. 103-337, § 1628(3)(B), substituted "lieutenant commander or commander" for "lieutenant commander or above" in two places.

Pub. L. 103-337, § 1628(3)(A), inserted "(1)" after "(c)".

Subsec. (e). Pub. L. 103-337, § 1628(4), struck out subsec. (e) which read as follows: "This section does not apply to women reserve officers or to reserve officers in the Nurse Corps."

Subsec. (f). Pub. L. 103-337, § 1628(4), struck out subsec. (f) which provided for transfer or discharge of rear admirals (lower half) in Naval Reserve and brigadier generals in Marine Corps Reserve on completion of 30 years service or five years in grade and for rear admirals in Naval Reserve and major generals in Marine Corps Reserve on completion of 35 years service or five years in grade and provided that rear admirals (lower half) and rear admirals in Naval Reserve and brigadier generals and major generals in Marine Corps Reserve could be considered for early retirement by continuation board. See sections 14508 and 14705 of this title.

Subsec. (g). Pub. L. 103-337, § 1628(4), struck out subsec. (g) which read as follows: "An officer in an active status in the Naval Reserve in the permanent grade of ensign who is found not qualified for promotion to the grade of lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of second lieutenant who is found not qualified for promotion to the grade of first lieutenant, may (unless he is sooner promoted) be eliminated from an active status."

1991—Subsec. (d). Pub. L. 102-190 substituted "W-5" for "W-4".

1985—Subsec. (f)(1), (3). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1984—Subsec. (g). Pub. L. 98-525 added subsec. (g).

1981—Subsec. (f)(1), (3). Pub. L. 97-86 substituted "commodore" for "commodore admiral".

1980—Subsec. (b). Pub. L. 96-513, § 337(a)(1), substituted "subsection (a) or (f)" for "subsection (a)".

Subsec. (d). Pub. L. 96-513, § 337(a)(2), substituted "as the years of active commissioned service of any regular officer on the active-duty" for "as any officer in the line on the active" and "or any regular officer on the active-duty list of the Marine Corps" for "or any officer on the active list of the Marine Corps".

Subsec. (e). Pub. L. 96-513, § 337(a)(3), substituted "does not apply to" for "applies to women officers appointed under section 5581 of this title, but not to other".

Subsec. (f). Pub. L. 96-513, § 337(a)(4), added subsec. (f).

1960—Subsec. (c). Pub. L. 86-559 empowered the Secretary to defer the retirement or discharge of officers serving in the grade of lieutenant commander in the Ready Reserve, in the permanent grade of lieutenant commander or above in the Naval Reserve, in the permanent grade of major or above in the Marine Corps Reserve, and in the permanent grade of captain or commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title XV, § 1501(c), Feb. 10, 1996, 110 Stat. 498, provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1673(c)(1) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1628 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 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

[§ 6390. Repealed. Pub. L. 96-513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85-422, § 11(a)(6)(E), 71 Stat. 131; Oct. 2, 1963, Pub. L. 88-132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96-342, title VIII, § 813(d)(8), 94 Stat. 1107, related to the retirement at age 62 of officers on the active list of the Navy and officers of the Marine Corps. See section 1251 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 6391, 6392. Repealed. Pub. L. 103-337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 6391, added Pub. L. 85-861, § 1(144)(B), Sept. 2, 1958, 72 Stat. 1510; amended Pub. L. 86-559, § 1(47), June 30, 1960, 74 Stat. 275; Pub. L. 102-190, div. A, title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 104-106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer to Retired Reserve of officers in Naval Reserve or Marine Corps Reserve above chief warrant officer, W-5, on becoming 62 years of age with provisions for deferral of retirement until age 64. See section 14512(b) of this title.

Section 6392, added Pub. L. 100-180, div. A, title VII, § 717(b)(1), Dec. 4, 1987, 101 Stat. 1114; amended Pub. L. 101-189, div. A, title VII, §§ 710(b), 711(b), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status