

AMENDMENTS

2014—Subsec. (b)(1). Pub. L. 113-291, § 502(b)(1), added par. (1) and struck out former par. (1) which read as follows: “An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

“(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

“(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.”

Subsec. (b)(3). Pub. L. 113-291, § 502(b)(2), designated existing provisions as subpar. (A), substituted “three months” for “90 days”, and added subpars. (B) to (D).

1996—Subsec. (b)(3). Pub. L. 104-106 added par. (3).

1993—Subsec. (e)(2)(B). Pub. L. 103-160 inserted “(i)” after “grade and competitive category”, inserted “(ii)” after “of this title, or”, and struck out comma after “any provision of law”.

1991—Subsec. (e). Pub. L. 102-190 designated existing provisions as pars. (1) and (2)(A), in par. (2)(A) inserted “(except as provided in subparagraph (B))” after “under this section, such list”, and added subpars. (B) and (C).

1990—Subsec. (a)(3). Pub. L. 101-510, § 521(b)(2)(A), added par. (3).

Subsec. (b)(1). Pub. L. 101-510, § 521(b)(2)(B), inserted “or section 638a of this title” after “under this section”.

1988—Subsec. (a). Pub. L. 100-456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

“(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

“(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

“(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

“(4) who holds the regular grade of major general or rear admiral and has served at least three and one-half years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.”

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore” wherever appearing.

1981—Subsec. (a)(3). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Subsec. (a)(3), (4). Pub. L. 97-22 substituted “three and one-half years of active duty” for “four years of active duty”.

Subsecs. (b), (c). Pub. L. 97-86 substituted “commodore” for “commodore admiral” wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

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

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

(a)(1) The Secretary of Defense may authorize the Secretary of a military department to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(2) Any authority provided to the Secretary of a military department under paragraph (1) shall expire on the date specified by the Secretary of Defense, but such expiration date may not be later than December 31, 2018.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who have failed of selection for promotion at least one time and whose names are not on a list of officers recommended for promotion.

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion.

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department

concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(4) In the case of an action under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned to waive the five-year period specified in section 638(c) of this title if the Secretary of Defense determines that it is necessary for the Secretary of that military department to have such authority in order to meet mission needs.

(d)(1) In the case of an action under subsection (b)(3), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3). That number may not be more than 30 percent of the number of officers considered.

(3) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(3) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(4) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added Pub. L. 101–510, div. A, title V, § 521(a)(1), Nov. 5, 1990, 104 Stat. 1559; amended Pub. L. 102–190, div. A, title V, § 503(b), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title V, § 503, title LXIV, § 4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; Pub. L. 103–160, div. A, title V, § 561(b), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, § 561(c), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 109–364, div. A, title VI, § 623(b), Oct. 17, 2006, 120 Stat. 2256; Pub. L. 112–239, div. A, title V, § 502, Jan. 2, 2013, 126 Stat. 1714; Pub. L. 113–66, div. A, title V, § 503(a), Dec. 26, 2013, 127 Stat. 750; Pub. L. 113–291, div. A, title V, § 503, Dec. 19, 2014, 128 Stat. 3355; Pub. L. 114–92, div. A, title V, § 503, Nov. 25, 2015, 129 Stat. 807.)

REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (b)(3)(C), is section 4403 of Pub. L. 102–484, which is set out as a note under section 1293 of this title.

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2015—Subsec. (d)(2). Pub. L. 114–92 substituted “officers considered.” for “officers considered—

“(A) in each grade in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or

“(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.”

2014—Subsec. (d)(3) to (5). Pub. L. 113–291 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: “The total number of officers described in subsection (b)(3) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.”

2013—Subsec. (a). Pub. L. 112–239, § 502(1), designated existing provisions as par. (1), struck out “, during the period beginning on October 1, 1990, and ending on December 31, 2001, and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “military department”, and added par. (2).

Subsec. (b)(2)(A). Pub. L. 113–66, § 503(a)(1), substituted “have failed of selection for promotion at least one time and whose names are not on a list of officers recommended for promotion” for “would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times)”.

Subsec. (b)(2)(B). Pub. L. 113–66, § 503(a)(2), substituted “have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion” for “would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years)”.

Subsec. (b)(3), (4). Pub. L. 112–239, § 502(2), redesignated par. (4) as (3) and struck out former par. (3) which

read as follows: “Suspending section 638(c) of this title.”

Subsec. (c)(4). Pub. L. 112-239, §502(3), added par. (4).
 Subsec. (d). Pub. L. 112-239, §502(4), substituted “subsection (b)(3)” for “subsection (b)(4)” wherever appearing and “except that through December 31, 2018,” for “except that during the period beginning on October 1, 2006, and ending on December 31, 2012,” in subpars. (A) and (B) of par. (2).

2006—Subsec. (a). Pub. L. 109-364, §623(b)(1), inserted “and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “December 31, 2001.”

Subsec. (d)(2)(A). Pub. L. 109-364, §623(b)(2)(A), inserted “, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade” before “; or” at end.

Subsec. (d)(2)(B). Pub. L. 109-364, §623(b)(2)(B), inserted “, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade” before period at end.

2000—Subsec. (a). Pub. L. 106-398 substituted “December 31, 2001” for “September 30, 2001”.

1998—Subsec. (a). Pub. L. 105-261 substituted “during the period beginning on October 1, 1990, and ending on September 30, 2001” for “during the nine-year period beginning on October 1, 1990”.

1993—Subsec. (a). Pub. L. 103-160 substituted “nine-year period” for “five-year period”.

1992—Subsec. (b)(4)(C). Pub. L. 102-484, §4403(g)(2), inserted “(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)” after “any provision of law”.

Subsec. (c)(3). Pub. L. 102-484, §503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102-190, §503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.”

Subsec. (c). Pub. L. 102-190, §503(b)(2), designated existing provisions as par. (1) and added par. (2).

§ 638b. Voluntary retirement incentive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraph (2), a member of the armed forces who, after having received all or part of a voluntary retirement incentive under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary retirement incentive received.

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

(3) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interest of the United States. The authority in this para-