

(b) **RETIRED OFFICERS.**—If qualified officers are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer—

(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and

(2) is senior to the grade of any officer to be considered by the board.

(c) **INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.**—No person may be a member of more than one board convened under this chapter to consider the same officer.

(d) **EXCLUSION FROM STRENGTH LIMITATION.**—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(Added Pub. L. 96-513, title I, §110, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 106-65, div. A, title V, §504(a), Oct. 5, 1999, 113 Stat. 590; Pub. L. 110-417, [div. A], title V, §505, Oct. 14, 2008, 122 Stat. 4434.)

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-417, §505(a)(1), (b), substituted “In General” for “Active Duty Officers” in heading, redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “Each member of the board shall be on the active-duty list.”

Subsec. (b). Pub. L. 110-417, §505(a)(2), struck out “on active duty” after “qualified officers” in introductory provisions.

1999—Pub. L. 106-65 amended text generally. Prior to amendment, text consisted of subsecs. (a) and (b) relating to officers eligible to serve on boards.

### CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

| Sec.   |   |
|--------|---|
| 1201.  | Regulars and members on active duty for more than 30 days: retirement.  |
| 1202.  | Regulars and members on active duty for more than 30 days: temporary disability retired list.                       |
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| Sec.    |   |
|---------|---|
| 1211.   | Members on temporary disability retired list: return to active duty; promotion.   |
| 1212.   | Disability severance pay.   |
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| 1216a.  | Determinations of disability: requirements and limitations on determinations.   |
| 1217.   | Academy cadets and midshipmen: applicability of chapter.  |
| 1218.   | Discharge or release from active duty: claims for compensation, pension, or hospitalization.  |
| 1218a.  | Discharge or release from active duty: transition assistance for reserve component members injured while on active duty.  |
| 1219.   | Statement of origin of disease or injury: limitations.  |
| [1220.] | Repealed.]  |
| 1221.   | Effective date of retirement or placement of name on temporary disability retired list.   |
| 1222.   | Physical evaluation boards.   |

#### AMENDMENTS

2011—Pub. L. 112-81, div. A, title V, §527(c)(2), Dec. 31, 2011, 125 Stat. 1402, substituted “Members determined fit for duty in Physical Evaluation Board: prohibition on involuntary administrative separation or denial of reenlistment due to unsuitability based on medical conditions considered in evaluation” for “Members determined fit for duty in Physical Evaluation Board evaluation: prohibition on involuntary administrative separation due to unsuitability based on medical conditions considered in evaluation” in item 1214a.

Pub. L. 111-383, div. A, title V, §534(a)(2), Jan. 7, 2011, 124 Stat. 4217, added item 1214a.

2009—Pub. L. 111-84, div. A, title VI, §641(b), Oct. 28, 2009, 123 Stat. 2365, added item 1218a.

2008—Pub. L. 110-181, div. A, title XVI, §1642(b), Jan. 28, 2008, 122 Stat. 465, added item 1216a.

2006—Pub. L. 109-364, div. A, title V, §597(a)(2), Oct. 17, 2006, 120 Stat. 2237, added item 1222.

2004—Pub. L. 108-375, div. A, title V, §§521(b), 555(b)(2), Oct. 28, 2004, 118 Stat. 1888, 1914, added item 1206a and substituted “Academy cadets and midshipmen: applicability of chapter” for “Cadets, midshipmen, and aviation cadets: chapter does not apply to” in item 1217.

1999—Pub. L. 106-65, div. A, title VI, §653(a)(2), Oct. 5, 1999, 113 Stat. 666, added item 1207a.

1997—Pub. L. 105-85, div. A, title V, §513(d)(3), Nov. 18, 1997, 111 Stat. 1731, inserted “or on inactive-duty training” after “Members on active duty for 30 days or less” in items 1204 and 1206.

1986—Pub. L. 99-661, div. A, title VI, §604(d)(4), Nov. 14, 1986, 100 Stat. 3876, struck out “; disability from injury” after “30 days or less” in items 1204, 1205, 1206.

1962—Pub. L. 87-651, title I, §107(e), Sept. 7, 1962, 76 Stat. 509, substituted “Discharge or release from active duty: claims for compensation, pension, or hospitalization” for “Explanation of rights before discharge” in item 1218, and “Statement of origin of disease or injury: limitations” for “Statement against interest void” in item 1219, and struck out item 1220 “Location of accredited representatives at military installations”.

1958—Pub. L. 85-861, §1(28)(C), Sept. 2, 1958, 72 Stat. 1451, added item 1221.

1957—Pub. L. 85-56, title XXII, §2201(31)(B), June 17, 1957, 71 Stat. 161, eff. Jan. 1, 1958, added items 1218 to 1220.

**§ 1201. Regulars and members on active duty for more than 30 days: retirement**

(a) RETIREMENT.—Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) ELIGIBLE MEMBERS.—This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Pub. L. 85-861, §1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87-651, title I, §107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95-377, §3(1), Sept. 19, 1978, 92 Stat. 719; Pub. L. 96-343, §10(c)(1), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96-513, title I, §117, Dec. 12, 1980, 94

Stat. 2878; Pub. L. 99-145, title V, §513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101-189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103-337, div. A, title XVI, §1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104-201, div. A, title V, §572(a), Sept. 23, 1996, 110 Stat. 2533; Pub. L. 110-181, div. A, title XVI, §1641(a), Jan. 28, 2008, 122 Stat. 464; Pub. L. 110-417, [div. A], title VII, §727(a), Oct. 14, 2008, 122 Stat. 4510.)

HISTORICAL AND REVISION NOTES  
1956 ACT

| Revised section | Source (U.S. Code)   | Source (Statutes at Large)  |
|-----------------|--|---|
| 1201 .....      | 37:272(a) (less clause (5), and less 2d proviso).<br>37:272(b) (less clause (5), and less 2d and last provisos).<br>37:272(f) (less applicability to 37:272(c) and (e)). | Oct. 12, 1949, ch. 681, § 402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to §402(c) and (e)), 63 Stat. 816, 817, 820. |

The words "any other member" are substituted for the words "a member of a Reserve component", in 37:272(a) and (b), since the words "Reserve component" are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component. The words "active duty (other than for training)" are substituted for the words "extended active duty" for clarity and to reflect the opinion of the Comptroller General in 31 Comp. Gen. 95, 99. The words "if the Secretary also determines that" are substituted for the words "That if condition (5) above is met by a finding that", in 37:272(a) and (b). The words "of such member", "upon retirement", and "to receive", in 37:272(a), are omitted as surplusage.

In clause (1), the words "based upon accepted medical principles" are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words "at the time of the determination" are substituted for the word "current", in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|----------------------------|
| 1201 .....      | [No source].       | [No source].               |

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B-130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2008—Subsec. (b)(3)(B)(i). Pub. L. 110-417 struck out "the member has six months or more of active military service and" before "the disability was not noted" and substituted "(unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service)" for "(unless compelling evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty)".

Pub. L. 110-181 amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the member has at least eight years of service computed under section 1208 of this title;".