

111-383, div. A, title X, §1075(g)(4), Jan. 7, 2011, 124 Stat. 4377.)

#### 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

2011—Subsec. (b). Pub. L. 111-383 made technical amendment to directory language of Pub. L. 109-364, §511(b)(3). See 2006 Amendment note below.

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), as amended by Pub. L. 111-383, §1075(g)(4), 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”.

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 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, §1075(g), Jan. 7, 2011, 124 Stat. 4376, provided that amendment by section 1075(g)(4) is effective as of Oct. 17, 2006, and as if included in Pub. L. 109-364 as enacted.

#### 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

Pub. L. 103-337, div. A, title XVI, §1684(a), Oct. 5, 1994, 108 Stat. 3024, 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 Na-

tional 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