

1992—Pub. L. 102-484 substituted “Promotions:” for “Promotions;” in section catchline.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 579. Removal from a promotion list

(a) The name of a warrant officer recommended for promotion by a selection board convened under this chapter may be removed from the report of the selection board by the President.

(b) The Secretary concerned may remove the name of a warrant officer who is on a promotion list as a result of being recommended for promotion by a selection board convened under this chapter at any time before the promotion is effective.

(c) An officer whose name is removed from the list of officers recommended for promotion by a selection board continues to be eligible for consideration for promotion.

(d) If the next selection board that considers the warrant officer for promotion under this chapter selects the warrant officer for promotion and the warrant officer is promoted, the Secretary concerned may, upon his promotion, grant him the same effective date for pay and allowances and the same date of rank, and the same position on the warrant officer active-duty list as the warrant officer would have had if his name had not been so removed.

(e) If the next selection board does not select the warrant officer for promotion, or if his name is again removed under subsection (a) from the list of officers recommended for promotion by the selection board or under subsection (b) from the warrant officer promotion list, he shall be treated for all purposes as if he has twice failed of selection for promotion.

(Added Pub. L. 102-190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 562 of this title prior to repeal by Pub. L. 102-190, §1112(a).

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation

(a)(1) Unless retired or separated sooner under some other provision of law, a regular chief warrant officer who has twice failed of selection for promotion to the next higher regular warrant officer grade shall be retired under paragraph (2) or (3) or separated from active duty under paragraph (4).

(2) If a warrant officer described in paragraph (1) has more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the rec-

ommended list under section 579 of this title, whichever applies, the warrant officer shall be retired. The date of such retirement shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(3) If a warrant officer described in paragraph (1) has at least 18 but not more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired not later than the date determined under the next sentence unless he is selected for promotion to the next higher regular warrant officer grade before that date. The date of the retirement of a warrant officer under the preceding sentence shall be on a date specified by the Secretary concerned, but not later than the first day of the seventh calendar month beginning after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(4)(A) If a warrant officer described in paragraph (1) has less than 18 years of creditable active service on (i) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (ii) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be separated (except as provided in subparagraph (C)). The date of such separation shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence.

(B) A warrant officer separated under this paragraph shall receive separation pay computed under section 1174 of this title, or severance pay computed under section 286a of title 14, as appropriate, except in a case in which—

(i) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(ii) he is serving on active duty in a grade above chief warrant officer, W-5, and he elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(C) If on the date on which a warrant officer is to be separated under subparagraph (A) the warrant officer has at least 18 years of creditable active service, the warrant officer shall be retained on active duty until retired under paragraph (3) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under subparagraph (A) or (B) of that paragraph.

(5) A warrant officer who is subject to retirement or discharge under this subsection is not eligible for further consideration for promotion.

(6) In this subsection, the term “creditable active service” means active service that could be credited to a warrant officer under section 511 of

the Career Compensation Act of 1949, as amended (70 Stat. 114).

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of a warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty in a grade above chief warrant officer, W-5, and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W-5, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date on which he is so retired or separated.

(e)(1) A regular warrant officer subject to discharge or retirement under this section may, subject to the needs of the service, be continued on active duty if—

(A) in the case of a warrant officer in the grade of chief warrant officer, W-2, or chief warrant officer, W-3, the warrant officer is selected for continuation on active duty by a selection board convened under section 573(c) of this title; and

(B) in the case of a warrant officer in the grade of chief warrant officer, W-4, the warrant officer is selected for continuation on active duty by the Secretary concerned under such procedures as the Secretary may prescribe.

(2)(A) A warrant officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with this section.

(B) A warrant officer in the grade of chief warrant officer, W-4, who is retained on active duty pursuant to procedures prescribed under paragraph (1)(B) is eligible for further consideration for promotion while remaining on active duty.

(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding subparagraph (A), a warrant officer who would otherwise be discharged under such subparagraph and who is within two years of qualifying for retirement under section 1293 of

this title shall, unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 573(c) of this title is subject to the approval of the Secretary concerned.

(6) The Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

(f) A warrant officer subject to discharge or retirement under this section, but against whom any action has been commenced with a view to trying the officer by court-martial, may be continued on active duty, without prejudice to such action, until the completion of such action.

(Added Pub. L. 102-190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1498; amended Pub. L. 103-160, div. A, title V, §505(a), Nov. 30, 1993, 107 Stat. 1645; Pub. L. 103-337, div. A, title V, §541(b)(5), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 109-364, div. A, title V, §505(a), (b), Oct. 17, 2006, 120 Stat. 2179; Pub. L. 111-383, div. A, title V, §541, Jan. 7, 2011, 124 Stat. 4218.)

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(6), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 564 of this title prior to repeal by Pub. L. 102-190, §1112(a).

AMENDMENTS

2011—Subsec. (f). Pub. L. 111-383 added subsec. (f).

2006—Subsec. (e)(1). Pub. L. 109-364, §505(a), substituted “continued on active duty if—” and subpars. (A) and (B) for “continued on active duty if he is selected for continuation on active duty by a selection board convened under section 573(c) of this title.”

Subsec. (e)(2). Pub. L. 109-364, §505(b), designated existing provisions as subpar. (A) and added subpar. (B).

2002—Subsec. (e)(6). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1994—Subsec. (a)(4)(B). Pub. L. 103-337, §541(b)(5)(A), inserted “, or severance pay computed under section 286a of title 14, as appropriate,” after “section 1174 of this title”.

Subsec. (e)(6). Pub. L. 103-337, §541(b)(5)(B), inserted “and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,” after “Secretary of Defense”.

1993—Subsec. (a)(4)(A). Pub. L. 103-160, §505(a)(1), inserted “(except as provided in subparagraph (C))” after “shall be separated”.

Subsec. (a)(4)(C). Pub. L. 103-160, §505(a)(2), added subpar. (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 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103-337, set out as a note under section 571 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, div. A, title V, §505(b), Nov. 30, 1993, 107 Stat. 1646, provided that: "The amendments made by subsection (a) [amending this section] shall apply to warrant officers who have not been separated pursuant to section 580(a)(4) of title 10, United States Code, before the date of enactment of this Act [Nov. 30, 1993]."

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

RETIRED AND RETAINER PAY OF MEMBERS ON RETIRED LISTS OR RECEIVING RETAINER PAY

Act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, as amended May 19, 1952, ch. 310, §4, 66 Stat. 80; Apr. 23, 1956, ch. 208, §1, 70 Stat. 114, set forth methods of computing retired pay, retirement pay, retainer pay, or equivalent pay on and after Oct. 1, 1949, for members of the uniformed services who had retired for reasons other than for physical disability before Oct. 1, 1949, members who had transferred to the Fleet Reserve or the Fleet Marine Corps Reserve before such date, and certain members of the Army Nurse Corps or the Navy Nurse Corps who had retired before such date, and provided that the amount of such pay would not exceed 75 percentum of the monthly basic pay upon which the computation had been based.

§ 580a. Enhanced authority for selective early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on October 1, 2015, and ending on October 1, 2019, to take the action set forth in subsection (b) with respect to regular warrant officers of an armed force under the jurisdiction of that Secretary.

(b) The Secretary of a military department may, with respect to regular warrant officers of an armed force, when authorized to do so under subsection (a), convene selection boards under section 573(c) of this title to consider for discharge regular warrant officers on the warrant officer active-duty list—

- (1) who have served at least one year of active duty in the grade currently held;
- (2) whose names are not on a list of warrant officers recommended for promotion; and
- (3) who are not eligible to be retired under any provision of law and are not within two years of becoming so eligible.

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

- (A) the names of all regular warrant officers described in that subsection in a particular grade and competitive category; or
- (B) the names of all regular warrant 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 warrant officers to be recommended for discharge by a selection board convened pursuant to subsection (b). That number may not be more than 30 percent of the number of officers considered—

- (A) in each grade in each competitive category; or
- (B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

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

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

(d) The discharge of any warrant officer pursuant to this section shall be considered involuntary for purposes of any other provision of law.

(e) This section applies to the Secretary of Homeland Security in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

(Added Pub. L. 103-160, div. A, title V, §504(a), Nov. 30, 1993, 107 Stat. 1644; amended Pub. L. 103-337, div. A, title V, §541(g), title X, §1070(a)(3), Oct. 5, 1994, 108 Stat. 2767, 2855; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 114-92, div. A, title V, §501, Nov. 25, 2015, 129 Stat. 806.)

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-92, §501(1), substituted "October 1, 2015, and ending on October 1, 2019" for "November 30, 1993, and ending on October 1, 1999".

Subsec. (c)(3) to (5). Pub. L. 114-92, §501(2), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: "The total number of regular warrant officers described in subsection (b) 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 warrant officers of that armed force (or the number of warrant officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year."

2002—Subsec. (e). Pub. L. 107-296 substituted "of Homeland Security" for "of Transportation".

1994—Subsec. (a). Pub. L. 103-337, §1070(a)(3), substituted "November 30, 1993," for "the date of the enactment of this section".

Subsec. (e). Pub. L. 103-337, §541(g), added subsec. (e).

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 section 541(g) of Pub. L. 103-337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103-337, set out as a note under section 571 of this title.