

Sec.	
1375.	Entitlement to commission: commissioned officers advanced on retired list.
1376.	Temporary disability retired lists.

AMENDMENTS

1994—Pub. L. 103-337, div. A, title XVI, §1671(b)(11), Oct. 5, 1994, 108 Stat. 3013, struck out item 1374 “Reserve commissioned officers: grade on retirement or transfer to Retired Reserve” and substituted “Temporary disability retired lists” for “Retired lists” in item 1376.

1980—Pub. L. 96-513, title V, §501(20), Dec. 12, 1980, 94 Stat. 2908, added item 1370.

1958—Pub. L. 85-861, §1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

§ 1370. Commissioned officers: general rule; exceptions

(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years.

(B) In the case of an officer to be retired in a general or flag officer grade, authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(D) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(E) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed (i) the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in

that grade or (ii) in the case of officers of that armed force in a grade specified in subparagraph (G), two officers, whichever number is greater.

(F) Notwithstanding subparagraph (E), during fiscal years 2013 through 2025, the number of lieutenant colonels and colonels of the Army, Air Force, and Marine Corps, and the number of commanders and captains of the Navy, for whom a reduction is made under this section during any fiscal year of service-in-grade otherwise required under this paragraph may not exceed four percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(G) Notwithstanding subparagraph (E), during fiscal years 2013 through 2025, the total number of brigadier generals and major generals of the Army, Air Force, and Marine Corps, and the total number of rear admirals (lower half) and rear admirals of the Navy, for whom a reduction is made under this section during any fiscal year of service-in-grade otherwise required under this paragraph may not exceed 10 percent of the authorized active-duty strength for that fiscal year for officers of that armed force in those grades.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) OFFICERS IN O-9 AND O-10 GRADES.—(1) An officer who is serving in or has served in the grade of general or admiral or lieutenant general or vice admiral may be retired in that grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and Congress that the officer served on active duty satisfactorily in that grade.

(2) In the case of an officer covered by paragraph (1), the three-year service-in-grade requirement in paragraph (2)(A) of subsection (a) may not be reduced or waived under that subsection—

(A) while the officer is under investigation for alleged misconduct; or

(B) while there is pending the disposition of an adverse personnel action against the officer for alleged misconduct.

(3)(A) The Secretary of Defense may delegate authority to make a certification with respect to an officer under paragraph (1) only to the Under Secretary of Defense for Personnel and Readiness or the Deputy Under Secretary of Defense for Personnel and Readiness.

(B) If authority is delegated under subparagraph (A) and, in the course of consideration of

an officer for a certification under paragraph (1), the Under Secretary or (if such authority is delegated to both the Under and Deputy Under Secretary) the Deputy Under Secretary makes a determination described in subparagraph (C) with respect to that officer, the Under Secretary or Deputy Under Secretary, as the case may be, may not exercise the delegated authority in that case, but shall refer the matter to the Secretary of Defense, who shall personally determine whether to issue a certification under paragraph (1) with respect to that officer.

(C) A determination referred to in subparagraph (B) is a determination that there is potentially adverse information concerning an officer and that such information has not previously been submitted to the Senate in connection with the consideration by the Senate of a nomination of that officer for an appointment for which the advice and consent of the Senate is required.

(d) RESERVE OFFICERS.—(1) Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade, under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary concerned in accordance with this subsection.

(2) In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(3)(A) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years.

(B) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade may be credited with satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade, if that person is transferred from an active status or discharged as a reserve commissioned officer—

(i) solely due to the requirements of a non-discretionary provision of law requiring that transfer or discharge due to the person's age or years of service; or

(ii) because the person no longer meets the qualifications for membership in the Ready Reserve solely because of a physical disability, as determined, at a minimum, by a medical evaluation board and at the time of such transfer or discharge such person (pursuant to section 12731b of this title or otherwise) meets the service requirements established by sec-

tion 12731(a) of this title for eligibility for retired pay under chapter 1223 of this title, unless the disability is described in section 12731b of this title.

(C) If a person covered by subparagraph (A) has completed at least six months of satisfactory service in grade, the person was serving in that grade while serving in a position of adjutant general required under section 314 of title 32 or while serving in a position of assistant adjutant general subordinate to such a position of adjutant general, and the person has failed to complete three years of service in that grade solely because the person's appointment to such position has been terminated or vacated as described in section 324(b) of such title, then such person may be credited with satisfactory service in that grade, notwithstanding the failure to complete three years of service in that grade.

(D) To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for promotion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(E) To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of subparagraph (A) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may only be the period for which the person served in the position after the Senate provides advice and consent for the appointment.

(F) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.

(4) A person whose length of service in the highest grade held does not meet the service in grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(5)(A) The Secretary of Defense may authorize the Secretary of a military department to reduce the 3-year period required by paragraph (3)(A) to a period not less than two years.

(B) In the case of a person who, upon transfer to the Retired Reserve or discharge, is to be

credited with satisfactory service in a general or flag officer grade under paragraph (1), authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that person only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(6) The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under paragraph (5) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

(e) **ADVANCE NOTICE TO CONGRESSIONAL COMMITTEES.**—(1) In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of authority under paragraph (2) of subsection (a) to reduce the three-year service-in-grade requirement otherwise applicable under that paragraph, the Secretary of Defense, before the officer is retired in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under that paragraph with respect to that officer.

(2) In the case of a person to be credited under subsection (d) with satisfactory service in a grade that is a general or flag officer grade who is eligible to be credited with such service in that grade only by reason of an exercise of authority under paragraph (5) of that subsection to reduce the three-year service-in-grade requirement otherwise applicable under paragraph (3)(A) of that subsection, the Secretary of Defense, before the person is credited with such satisfactory service in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under paragraph (5) of that subsection with respect to that officer.

(3) In the case of an officer to whom subsection (c) applies, the requirement for notification under paragraph (1) is satisfied if the notification is included in the certification submitted with respect to that officer under paragraph (1) of such subsection.

(Added Pub. L. 96-513, title I, §112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101-510, div. A, title V, §522, Nov. 5, 1990, 104 Stat. 1561; Pub. L. 103-160, div. A, title V, §561(d), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103-337, div. A, title XVI, §§1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014; Pub. L. 104-106, div. A, title V, §502(a), (b), (f), (g), Feb. 10, 1996, 110 Stat. 292, 293; Pub. L. 104-201, div. A, title V, §544(a), Sept. 23, 1996, 110

Stat. 2522; Pub. L. 105-261, div. A, title V, §§512(a), 513(a), 561(d), (o), Oct. 17, 1998, 112 Stat. 2007, 2025, 2026; Pub. L. 106-65, div. A, title X, §1066(a)(9), (b)(3), Oct. 5, 1999, 113 Stat. 770, 772; Pub. L. 106-398, §1 [[div. A], title V, §571(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 107-107, div. A, title V, §§502, 514, Dec. 28, 2001, 115 Stat. 1080, 1093; Pub. L. 107-314, div. A, title V, §505, Dec. 2, 2002, 116 Stat. 2533; Pub. L. 108-136, div. A, title V, §506, Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109-163, div. A, title V, §501, Jan. 6, 2006, 119 Stat. 3225; Pub. L. 112-239, div. A, title V, §§506, 507, Jan. 2, 2013, 126 Stat. 1716; Pub. L. 114-328, div. A, title V, §508(d), Dec. 23, 2016, 130 Stat. 2109; Pub. L. 115-91, div. A, title V, §504, Dec. 12, 2017, 131 Stat. 1374.)

AMENDMENTS

2017—Subsec. (a)(2)(G). Pub. L. 115-91 substituted “2025” for “2017”.

2016—Subsec. (a)(2)(F). Pub. L. 114-328 substituted “2025” for “2018”.

2013—Subsec. (a)(2)(E). Pub. L. 112-239, §507(1), inserted “(i)” after “exceed” and “or (i) in the case of officers of that armed force in a grade specified in subparagraph (G), two officers, whichever number is greater” before period at end.

Subsec. (a)(2)(F). Pub. L. 112-239, §506, substituted “fiscal years 2013 through 2018” for “the period ending on December 31, 2007” and “Army, Air Force, and Marine Corps” for “Air Force” and struck out “in the period” after “any fiscal year”.

Subsec. (a)(2)(G). Pub. L. 112-239, §507(2), added subpar. (G).

2006—Subsec. (a)(2)(F). Pub. L. 109-163 added subpar. (F).

2003—Subsec. (a)(2)(A). Pub. L. 108-136, §506(a), struck out “in the case of retirements effective during the period beginning on October 1, 2002, and ending on December 31, 2003” after “two years”.

Subsec. (d)(5)(A). Pub. L. 108-136, §506(b), substituted “two years” for “2 years in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003”.

2002—Subsec. (a)(2)(A). Pub. L. 107-314, §505(a)(1), substituted “during the period beginning on October 1, 2002, and ending on December 31, 2003” for “during the period beginning on October 1, 1990, and ending on December 31, 2001”.

Subsec. (a)(2)(B) to (E). Pub. L. 107-314, §505(a)(2), (3), added subpars. (B) and (C) and redesignated former subpars. (B) and (C) as (D) and (E), respectively.

Subsec. (d)(5), (6). Pub. L. 107-314, §505(b), designated first sentence as subpar. (A), substituted “in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003” for “in the case of retirements effective during the period beginning on October 17, 1998, and ending on December 31, 2001”, and added subpars. (B) and (C), and designated second sentence as (6) and substituted “paragraph (5)” for “this paragraph”.

Subsec. (e). Pub. L. 107-314, §505(c), added subsec. (e).

2001—Subsec. (c)(3). Pub. L. 107-107, §502, added par. (3).

Subsec. (d)(3)(B). Pub. L. 107-107, §514, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade and is transferred from an active status or discharged as a reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person’s age or years of service may be credited with satisfactory service in the grade in which serving at the time of such transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade.”

2000—Subsecs. (a)(2)(A), (d)(5). Pub. L. 106-398 substituted “December 31, 2001” for “September 30, 2001”.

1999—Subsec. (d)(1). Pub. L. 106-65, § 1066(a)(9)(A), substituted “chapter 1223” for “chapter 1225”.

Subsec. (d)(3)(F). Pub. L. 106-65, § 1066(b)(3), made technical amendment to Pub. L. 105-261, § 513(a). See 1998 Amendment note below.

Subsec. (d)(5). Pub. L. 106-65, § 1066(a)(9)(B), substituted “October 17, 1998,” for “the date of the enactment of this paragraph”.

1998—Subsec. (a)(2)(A). Pub. L. 105-261, § 561(d), 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”.

Subsec. (d)(3)(E). Pub. L. 105-261, § 512(a), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “To the extent authorized by the Secretary of the military department concerned, a person who, after having been extended temporary Federal recognition as a reserve officer of the Army National Guard in a particular grade under section 308 of title 32 or temporary Federal recognition as a reserve officer of the Air National Guard in a particular grade under such section, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while extended the temporary Federal recognition, but only if the person was subsequently extended permanent Federal recognition as a reserve officer in that grade and also served in that position after being extended the permanent Federal recognition.”

Subsec. (d)(3)(F). Pub. L. 105-261, § 513(a), as amended by Pub. L. 106-65, § 1066(b)(3), added subpar. (F).

Subsec. (d)(5). Pub. L. 105-261, § 561(o), added par. (5). 1996—Subsec. (a). Pub. L. 104-106, § 502(g)(1), inserted heading.

Subsec. (a)(2)(A). Pub. L. 104-106, § 502(a)(1), struck out “and below lieutenant general or vice admiral” after “commander”.

Subsec. (a)(2)(C). Pub. L. 104-106, § 502(f), substituted “In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade” for “The number of officers in an armed force in a grade”.

Subsec. (b). Pub. L. 104-106, § 502(g)(2), inserted heading.

Subsec. (c). Pub. L. 104-106, § 502(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Upon retirement an officer of the Army, Navy, Air Force, or Marine Corps who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of general or admiral or lieutenant general or vice admiral under section 601 of this title may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him while serving on active duty.”

Subsec. (d). Pub. L. 104-106, § 502(g)(3), inserted heading.

Subsec. (d)(2). Pub. L. 104-201, § 544(a)(2), redesignated subpar. (A) as entire par. (2). Former subpar. (B) redesignated subsec. (d)(3).

Subsec. (d)(2)(B). Pub. L. 104-106, § 502(a)(2), struck out “and below lieutenant general or vice admiral” after “commander” in first sentence.

Subsec. (d)(3). Pub. L. 104-201, § 544(a)(3), (4), redesignated subsec. (d)(2)(B) as par. (3), designated first and second sentences as subpars. (A) and (B), respectively, in subpar. (B), substituted “subparagraph (A)” for “the preceding sentence”, and added subpars. (C) to (E). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 104-201, § 544(a)(1), redesignated par. (3) as (4).

1994—Subsec. (a)(1). Pub. L. 103-337, § 1671(c)(7)(B), substituted “chapter 1223” for “chapter 67”.

Subsec. (d). Pub. L. 103-337, § 1641, added subsec. (d).

1993—Subsec. (a)(2)(A). Pub. L. 103-160 substituted “nine-year period” for “five-year period”.

1990—Subsec. (a)(2). Pub. L. 101-510 inserted “(A)” after “(2)”, inserted before period at end of first sen-

tence “, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the five-year period beginning on October 1, 1990”, designated second and third sentences as subpar. (B), substituted “subparagraph (A)” for “the preceding sentence”, and added subpar. (C).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-65, div. A, title X, § 1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105-261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title V, § 512(b), Oct. 17, 1998, 112 Stat. 2007, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and shall apply with respect to appointments to higher grades that take effect after that date.”

Pub. L. 105-261, div. A, title V, § 513(b), Oct. 17, 1998, 112 Stat. 2008, provided that: “Subparagraph (F) of such section [subsec. (d)(3)(F) of this section], as added by subsection (a), shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and shall apply with respect to transfers referred to in such subparagraph that are made on or after that date.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title V, § 502(e), Feb. 10, 1996, 110 Stat. 293, provided that: “The amendment made by subsection (a)(2) [amending this section] shall take effect on October 1, 1996, immediately after subsection (d) of section 1370 of title 10, United States Code, takes effect under section 1691(b)(1) of the Reserve Officer Personnel Management Act (108 Stat. 3026) [Pub. L. 103-337, set out as a note under section 10001 of this title].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(B) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1641 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

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

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to the time-in-grade requirement for voluntary retirement of officers not subsequently promoted, see section 629 of Pub. L. 96-513, set out as a note under section 611 of this title.

§ 1371. Warrant officers: general rule

Unless entitled to a higher retired grade under some other provision of law, a warrant officer shall be retired in the highest regular or reserve warrant officer grade in which the warrant officer served satisfactorily, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104; Pub. L. 114-92, div. A, title V, § 505, Nov. 25, 2015, 129 Stat. 808.)