

duty list determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added Pub. L. 96-513, title I, §106, Dec. 12, 1980, 94 Stat. 2868, §689; amended Pub. L. 97-22, §4(g), July 10, 1981, 95 Stat. 127; renumbered §12320 and amended Pub. L. 103-337, div. A, title XVI, §§1625, 1662(e)(2), 1675(c)(11), Oct. 5, 1994, 108 Stat. 2962, 2992, 3018; Pub. L. 104-106, div. A, title XV, §1501(a)(2), Feb. 10, 1996, 110 Stat. 495.)

#### AMENDMENTS

1996—Pub. L. 104-106 made technical correction to directory language of Pub. L. 103-337, §1625. See 1994 Amendment note below.

1994—Pub. L. 103-337, §1675(c)(11), substituted “12207” for “3353, 5600, or 8353”.

Pub. L. 103-337, §1662(e)(2), renumbered section 689 of this title as this section.

Pub. L. 103-337, §1625, as amended by Pub. L. 104-106, inserted “or full-time National Guard duty” after “who is ordered to active duty” and after “shall be ordered to active duty” and inserted “and placed on the active-duty list” after “and is ordered to active duty”.

1981—Pub. L. 97-22 inserted provision relating to a reserve officer who is credited with service under section 3353, 5600, or 8353 of this title and is ordered to active duty.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(e)(2) and 1675(c)(11) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1625 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.

### § 12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned

The number of members of the reserve components serving on active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components who are assigned to duty with a unit of the Reserve Officer Training Corps program may not exceed 275.

(Added Pub. L. 101-510, div. A, title V, §559(a)(1), Nov. 5, 1990, 104 Stat. 1571, §687; renumbered §690 and amended Pub. L. 102-25, title VII, §704(a)(3)(A), (B), Apr. 6, 1991, 105 Stat. 118; Pub. L. 102-190, div. A, title X, §1061(a)(4)(A), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102-484, div. A, title V, §512, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103-160, div. A, title V, §512, Nov. 30, 1993, 107 Stat. 1649; renumbered §12321 and amended Pub. L. 103-337, div. A, title XVI, §1662(e)(2), (3), Oct. 5, 1994, 108 Stat. 2992.)

#### AMENDMENTS

1994—Pub. L. 103-337 renumbered section 690 of this title as this section and substituted “Reserve Officer

Training Corps units: limitation on number of Reserves assigned” for “Limitation on duty with Reserve Officer Training Corps units” as section catchline.

1993—Pub. L. 103-160 substituted “may not exceed 275” for “may not exceed 200”.

1992—Pub. L. 102-484 substituted “The number of members of the reserve components” for “A member of a reserve component”, “who are assigned” for “may not be assigned”, and “may not exceed 200.” for period at end.

1991—Pub. L. 102-190 substituted “Corps” for “Corp” in section catchline.

Pub. L. 102-25, §704(a)(3)(B), renumbered section 687 of this title as this section.

Pub. L. 102-25, §704(a)(3)(A), made technical correction to directory language of Pub. L. 101-510, §559(a)(1), which enacted this section.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-25, title VII, §704(e), Apr. 6, 1991, 105 Stat. 120, provided that: “The amendments made by this section [amending this section and sections 6686 and 7381b of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section, sections 1701, 1705, 1721, 1724, 1733, 2302, 2306a, 2432, and 3074 of this title, and section 1928 of Title 22, Foreign Relations and Intercourse] shall apply as if included in the enactment of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510).”

#### EFFECTIVE DATE

Pub. L. 101-510, div. A, title V, §559(b), Nov. 5, 1990, 104 Stat. 1571, as amended by Pub. L. 102-25, title VII, §704(a)(3)(C), Apr. 6, 1991, 105 Stat. 118, provided that: “Section 690 [now 12321] of title 10, United States Code, as added by subsection (a), shall take effect on September 30, 1991.”

#### WAIVER OF PROHIBITION ON CERTAIN RESERVE SERVICE WITH ROTC PROGRAM

Pub. L. 102-190, div. A, title V, §525, Dec. 5, 1991, 105 Stat. 1363, as amended by Pub. L. 104-106, div. A, title XV, §1501(d)(2), Feb. 10, 1996, 110 Stat. 500, provided that: “The Secretary of the military department concerned may waive the prohibition in section 12321 of title 10, United States Code, in the case of a member of a reserve component of the Armed Forces referred to in that section who is serving in an assignment to duty with a unit of the Reserve Officer Training Corps program on September 30, 1991, if the Secretary determines that the removal of the member from that assignment will cause a financial hardship for that member.”

### § 12322. Active duty for health care

A member of a uniformed service described in paragraph (1)(B) or (2)(B) of section 1074a(a) of this title may be ordered to active duty, and a member of a uniformed service described in paragraph (1)(A) or (2)(A) of such section may be continued on active duty, for a period of more than 30 days while the member is being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty as described in any of such paragraphs.

(Added Pub. L. 106-65, div. A, title VII, §705(a)(1), Oct. 5, 1999, 113 Stat. 683.)

### § 12323. Active duty pending line of duty determination required for response to sexual assault

(a) CONTINUATION ON ACTIVE DUTY.—In the case of a member of a reserve component who is the

alleged victim of sexual assault committed while on active duty and who is expected to be released from active duty before the determination is made regarding whether the member was assaulted while in the line of duty (in this section referred to as a “line of duty determination”), the Secretary concerned, upon the request of the member, may order the member to be retained on active duty until completion of the line of duty determination. A member eligible for continuation on active duty under this subsection shall be informed as soon as practicable after the alleged assault of the option to request continuation on active duty under this subsection.

(b) **RETURN TO ACTIVE DUTY.**—In the case of a member of a reserve component not on active duty who is the alleged victim of a sexual assault that occurred while the member was on active duty and when the line of duty determination is not completed, the Secretary concerned, upon the request of the member, may order the member to active duty for such time as necessary for completion of the line of duty determination.

(c) **REGULATIONS.**—The Secretaries of the military departments shall prescribe regulations to carry out this section, subject to guidelines prescribed by the Secretary of Defense. The guidelines of the Secretary of Defense shall provide that—

(1) a request submitted by a member described in subsection (a) or (b) to continue on active duty, or to be ordered to active duty, respectively, must be decided within 30 days from the date of the request; and

(2) if the request is denied, the member may appeal to the first general officer or flag officer in the chain of command of the member, and in the case of such an appeal a decision on the appeal must be made within 15 days from the date of the appeal.

(Added Pub. L. 112-239, div. A, title V, §571(a), Jan. 2, 2013, 126 Stat. 1753.)

#### CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

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##### AMENDMENTS

1996—Pub. L. 104-106, div. A, title XV, §1501(b)(18)(A), Feb. 10, 1996, 110 Stat. 497, inserted “the” after “Army and Air National Guard of” in items 12401, 12402, 12403, and 12404.

#### § 12401. Army and Air National Guard of the United States: status

Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3495 and 8495 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

##### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### § 12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States to active duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

(Added Pub. L. 103-337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104-106, div. A, title XV, §1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3496 and 8496 of this title, prior to repeal by Pub. L. 103-337, §1662(f)(2).

##### AMENDMENTS

1996—Pub. L. 104-106 inserted “the” in section catchline.

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

##### EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.