

(A) has served on active duty for more than 20 years, but not more than 29 years, on the approved date of retirement;

(B) meets the minimum length of commissioned service requirement for voluntary retirement as a commissioned officer in accordance with section 7311, 8323, or 9311 of this title, as applicable to that officer;

(C) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement years of active service for the member's grade as specified in section 633 or 634 of this title;

(D) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement age under any other provision of law; and

(E) meets any additional requirements for such eligibility as is specified by the Secretary concerned, including any requirement relating to years of service, skill rating, military specialty or competitive category, grade, any remaining period of obligated service, or any combination thereof.

(2) The following officers are not eligible for a voluntary retirement incentive payment under this section:

(A) An officer being evaluated for disability under chapter 61 of this title.

(B) An officer projected to be retired under section 1201 or 1204 of this title.

(C) An officer projected to be discharged with disability severance pay under section 1212 of this title.

(D) A member transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(E) An officer subject to pending disciplinary action or subject to administrative separation or mandatory discharge under any other provision of law or regulation.

(d) AMOUNT OF PAYMENT.—The amount of the voluntary retirement incentive payment paid an officer under this section shall be an amount determined by the Secretary concerned, but not to exceed an amount equal to 12 times the amount of the officer's monthly basic pay at the time of the officer's retirement. The amount may be paid in a lump sum at the time of retirement.

(e) REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.—(1) Except as provided in paragraph (2), a member of the armed forces who, after having received all or part of a voluntary retirement incentive under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary retirement incentive received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty under any provision of law shall not be subject to this subsection.

(3) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that

recovery would be against equity and good conscience or would be contrary to the best interest of the United States. The authority in this paragraph may be delegated only to the Under Secretary of Defense for Personnel and Readiness and the Principal Deputy Under Secretary of Defense of Personnel and Readiness.

(Added Pub. L. 112-81, div. A, title V, §504(a)(1), Dec. 31, 2011, 125 Stat. 1389; amended Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

AMENDMENTS

2018—Subsec. (c)(1)(B). Pub. L. 115-232 substituted “section 7311, 8323, or 9311” for “section 3911, 6323, or 8911”.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

§ 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2866.)

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.

§ 640. Deferment of retirement or separation for medical reasons

(a) If the Secretary of the military department concerned determines that the evaluation of the physical condition of an officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the member's well being before the date on which the officer would otherwise be required to retire or be separated under this title, the Secretary may defer the retirement or separation of the officer under this title.

(b) A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 107-107, div. A, title V, §507, Dec. 28, 2001, 115 Stat. 1090.)

AMENDMENTS

2001—Pub. L. 107-107 amended text generally. Prior to amendment, text read as follows: “The Secretary of the

military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under 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.

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.	
641.	Applicability of chapter.
642.	Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
643.	Chaplains: discharge or retirement upon loss of professional qualifications.
[644.	Repealed.]
645.	Definitions.
646.	Consideration of performance as a member of the Joint Staff.
647.	Force shaping authority.

AMENDMENTS

2004—Pub. L. 108-375, div. A, title V, § 501(c)(1)(B), Oct. 28, 2004, 118 Stat. 1874, added item 647.

1994—Pub. L. 103-337, div. A, title XVI, § 1671(b)(5), Oct. 5, 1994, 108 Stat. 3013, struck out item 644 "Authority to suspend officer personnel laws".

1984—Pub. L. 98-525, title XIII, § 1301(d)(2), Oct. 19, 1984, 98 Stat. 2612, added item 646.

§ 641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

(B) on active duty under section 7038, 8083, 8084, 9038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or

(C) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy, the registrar, dean, and permanent professors at the United States Air Force Academy, and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy).

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 98-525, title IV, § 414(a)(5), title V, § 527(b), Oct. 19, 1984, 98 Stat. 2519, 2525; Pub. L. 99-433, title V, § 531(a)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103-337, div. A, title XVI, § 1671(c)(5), Oct. 5, 1994, 108 Stat. 3014; Pub.

L. 104-106, div. A, title XV, § 1501(c)(6), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104-201, div. A, title XII, § 1212(e), Sept. 23, 1996, 110 Stat. 2694; Pub. L. 106-398, § 1 [[div. A], title V, § 521], Oct. 30, 2000, 114 Stat. 1654, 1654A-108; Pub. L. 107-107, div. A, title V, § 511(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 108-375, div. A, title IV, § 416(j), title V, § 501(d), Oct. 28, 2004, 118 Stat. 1869, 1874; Pub. L. 109-364, div. A, title VI, § 621(c), Oct. 17, 2006, 120 Stat. 2255; Pub. L. 110-181, div. A, title V, § 508(b), Jan. 28, 2008, 122 Stat. 97; Pub. L. 115-91, div. A, title VI, § 618(b), Dec. 12, 2017, 131 Stat. 1426; Pub. L. 115-232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

CODIFICATION

Pub. L. 103-337, div. A, title XVI, §§ 1624, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, which directed amendment of this section effective Oct. 1, 1996, by inserting "(a)" before "Officers in the following" and by adding at the end a new subsec. (b), was amended by Pub. L. 104-106, div. A, title XV, § 1501(a)(1)(A), Feb. 10, 1996, 110 Stat. 495, and, as so amended, amends section 620 of this title instead of this section.

AMENDMENTS

2018—Par. (1)(B). Pub. L. 115-232 substituted "section 7038, 8083, 8084, 9038," for "section 3038, 5143, 5144, 8038."

2017—Par. (6). Pub. L. 115-91 struck out par. (6) which read as follows: "Officers appointed pursuant to an agreement under section 329 of title 37."

2008—Par. (2). Pub. L. 110-181 substituted ", the registrar" for "and the registrar" and inserted ", and permanent professors of the Navy (as defined in regulations prescribed by the Secretary of the Navy)" before period at end.

2006—Par. (6). Pub. L. 109-364 added par. (6).

2004—Par. (1). Pub. L. 108-375, § 416(j), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"(1) Reserve officers—

"(A) on active duty for training;

"(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32;

"(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

"(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), if the call or order to active duty, under regulations prescribed by the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;

"(E) on active duty to pursue special work;

"(F) ordered to active duty under section 12304 of this title;

"(G) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

"(H) on full-time National Guard duty."

Par. (1)(F). Pub. L. 108-375, § 501(d), which directed substitution of "sections 12302 and 12304" for "section 12304" in subpar. (F), could not be executed because par. (1) did not contain a subpar. (F) subsequent to amendment by Pub. L. 108-375, § 416(j). See above.

2001—Par. (1)(D). Pub. L. 107-107 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "on the reserve active-status list who are on active duty under section 12301(d) of this title, other than as provided in subparagraph (C), under a call or order to active duty specifying a period of three years or less;"

2000—Par. (1)(D) to (H). Pub. L. 106-398 added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.