

cerned, has been recommended” for “as determined by the Secretary concerned, is available”.

2000—Subsec. (b)(1)(A). Pub. L. 106-398, §1 [[div. A], title V, §501(1)], inserted “or is recommended for such an assignment under regulations prescribed by the Secretary of the Army” after “Army Reserve”.

Subsec. (b)(2)(A). Pub. L. 106-398, §1 [[div. A], title V, §501(2)], inserted “or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force” after “reserve grade”.

1997—Subsec. (b)(1)(A). Pub. L. 105-85 substituted “duties of a general officer of the next higher reserve grade in the Army Reserve,” for “duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit.”.

1996—Subsec. (a). Pub. L. 104-106 substituted “or a reserve officer” for “or a Reserve officer” in introductory provisions.

#### 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 Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

### § 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer’s appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer’s Federal recognition in the officer’s reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2944.)

#### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

### § 14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer—

(1) shall be treated as if the officer had not been considered and recommended for promotion by the selection board or examined and been found qualified for Federal recognition; and

(2) may not be placed on a promotion list or promoted to the higher grade after returning to an active status,

unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

(b) EFFECT OF PLACEMENT ON ACTIVE-DUTY LIST.—A reserve officer who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title and who before being promoted is placed on the active-duty list of the same armed force and placed in the same competitive category shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list for officers on the active-duty list established under chapter 36 of this title.

(c) OFFICERS ON A PROMOTION LIST REMOVED FROM ACTIVE-DUTY LIST.—An officer who is on the active-duty list and is on a promotion list as the result of selection for promotion by a selection board convened under chapter 36 of this title and who before being promoted is removed from the active-duty list and placed on the reserve active-status list of the same armed force and in the same competitive category (including a regular officer who on removal from the active-duty list is appointed as a reserve officer and placed on the reserve active-status list)

shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list established under this chapter.

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—(1) Except as provided in subsection (e), if a reserve officer is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14315 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer—

(A) is ordered to active duty as a member of the unit in which the vacancy exists when that unit is ordered to active duty; or

(B) has been ordered to or is serving on active duty in support of a contingency operation.

(2) If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition.

(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—(1) A reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion—

(A) by a mandatory promotion board convened under section 14101(a) of this title or a special selection board convened under section 14502 of this title; or

(B) in the case of an officer who has been ordered to or is serving on active duty in support of a contingency operation, by a vacancy promotion board convened under section 14101(a) of this title, or by examination for Federal recognition under title 32.

(2) An officer may not be considered for promotion under this subsection after the end of the two-year period beginning on the date on which the officer is ordered to active duty.

(3) An officer may not be considered for promotion under this subsection during a period when the operation of this section has been suspended by the President under section 123(a) of this title.

(4) Consideration of an officer for promotion under this subsection shall be under regulations prescribed by the Secretary of the military department concerned.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2945; amended Pub. L. 104-106, div. A, title XV, §1501(b)(26), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105-85, div. A, title X, §1073(a)(68), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 108-136, div. A, title V, §512(a), Nov. 24, 2003, 117 Stat. 1459; Pub. L. 110-417, [div. A], title V, §513, Oct. 14, 2008, 122 Stat. 4441.)

#### PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in sections 3378, 5906, and 8378 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

#### AMENDMENTS

2008—Subsec. (d). Pub. L. 110-417, §513(a), designated first sentence as par. (1) and second sentence as par. (2) and, in par. (1), substituted “unless the officer—” for “unless the officer”, inserted subpar. (A) designation before “is ordered”, substituted “duty; or” for “duty.”, and added subpar. (B).

Subsec. (e)(1)(B). Pub. L. 110-417, §513(b), inserted “, or by examination for Federal recognition under title 32” before period at end.

2003—Subsec. (d). Pub. L. 108-136, §512(a)(1), substituted “Except as provided in subsection (e), if a reserve officer” for “If a reserve officer”.

Subsec. (e). Pub. L. 108-136, §512(a)(2), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title for not more than two years from the date the officer is ordered to active duty unless the President suspends the operation of this section under the provisions of section 123 or 10213 of this title.”

1997—Subsec. (d). Pub. L. 105-85 substituted “section 14315” for “section 14314”.

1996—Subsec. (e). Pub. L. 104-106 inserted heading and substituted “123 or 10213” for “10213 or 644”.

#### 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 Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

### CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

Sec.	
14501.	Failure of selection for promotion.
14502.	Special selection boards: correction of errors.
14503.	Discharge of officers with less than six years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade).
14504.	Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy.
14505.	Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy.
14506.	Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy.
14507.	Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy.
14508.	Removal from the reserve active-status list for years of service: reserve general and flag officers.
14509.	Separation at age 62: reserve officers in grades below brigadier general or rear admiral (lower half).
14510.	Separation at age 62: brigadier generals and rear admirals (lower half).