

“OFFICERS ON ACTIVE DUTY IN GRADE ABOVE GENERAL

“SEC. 632. Section 1251 of title 10, United States Code, as added by this Act, relating to mandatory retirement for age, shall not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general.

“DEFINITIONS

“SEC. 633. For the purposes of this title:

“(1) The term ‘officer’ does not include warrant officers.

“(2) The term ‘active-duty list’ means the active-duty list established by the Secretary of the military department concerned pursuant to section 620 of title 10, United States Code, as added by this Act.

“SAVINGS PROVISION FOR RETIRED GRADE OF CERTAIN RESERVE OFFICERS

“SEC. 634. Unless entitled to a higher grade under any other provision of law, a member of the Army or Air Force who is a reserve officer and who—

“(1) is on active duty on September 14, 1981; and

“(2) after such date retires under section 3911 or 8911 [now 7311 or 9311] of title 10, United States Code, is entitled to retire in the reserve grade which he held or to which he had been selected for promotion on September 14, 1981.

“SAVINGS PROVISION FOR ORIGINAL APPOINTMENT IN CERTAIN GRADES UNDER EXISTING REGULATIONS

“SEC. 635. Any person who before September 15, 1981—

“(1) was selected for participation in a postbaccalaureate educational program leading to an appointment as a commissioned officer or had completed a postbaccalaureate program and was selected for appointment as a commissioned officer of the Army, Navy, Air Force, or Marine Corps;

“(2) under regulations of the Secretary of the military department concerned in effect on December 12, 1980, would have been appointed and ordered to active duty in a grade specified or determined in accordance with such regulations; and

“(3) had not been so appointed and ordered to active duty,

may be appointed and ordered to active duty in such grade with a date of rank and position on the active-duty list junior to that of all other officers of the same grade and competitive category serving on active duty.

“RETENTION IN GRADE OF CERTAIN RESERVE OFFICERS

“SEC. 636. A reserve officer of the Army, Navy, Air Force, or Marine Corps who on September 14, 1981—

“(1) is serving on active duty (A) under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) [now 50 U.S.C. 3809(b)(2)] for the administration of the Selective Service System, or (B) under section 708 of title 32; and

“(2) is serving in a temporary grade or is selected for promotion to a temporary grade,

may continue to serve in or may be promoted to and serve in such grade until promoted to a higher grade, separated, or retired.

“SAVINGS PROVISION REGARDING DISCHARGE OF REGULAR OFFICERS

“SEC. 637. An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps who on September 14, 1981, was serving on active duty may not be discharged under section 630(1)(A) of title 10, United States Code, as added by this Act, on or after the day on which that officer completes three years of continuous service as a regular commissioned officer.

“REPAYMENT OF READJUSTMENT AND SEVERANCE PAY

“SEC. 638. Notwithstanding section 1174(h) of title 10, United States Code, as added by this Act, a person who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, be-

comes entitled to retired or retainer pay under any provision of title 10 or title 14, United States Code, shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981.

“SAVINGS PROVISION FOR PROMOTION CONSIDERATION OF CERTAIN RETIRED OFFICERS

“SEC. 639. Notwithstanding sections 619, 620, and 641(4) of title 10, United States Code, a retired officer serving on active duty on the date of the enactment of this section [Oct. 19, 1984] who on September 14, 1981, was on active duty as a retired officer recalled to active duty and who—

“(1) was eligible for consideration for promotion on that date; and

“(2) has served continuously on active duty since that date,

may be considered for promotion (under regulations prescribed by the Secretary of the military department concerned) by a selection board that convenes after the date of the enactment of this section as if he had been placed on the active-duty list pursuant to section 621 of this Act.”

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers of the same armed force as the officers under consideration by the board. Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be determined by the Secretary of the military department concerned, in the Secretary's discretion. Notwithstanding the first sentence of this paragraph, in the case of a board which is considering officers in the grade of colonel or brigadier

dier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c)(1) Each selection board convened under section 611(a) of this title that will consider an officer described in paragraph (2) shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is a joint qualified officer.

(2) Paragraph (1) applies with respect to an officer who—

(A) is serving on, or has served on, the Joint Staff; or

(B) is a joint qualified officer.

(3) The Secretary of Defense may waive the requirement in paragraph (1) in the case of—

(A) any selection board of the Marine Corps; or

(B) any selection board that is considering officers in specialties identified in paragraph (2) or (3) of section 619a(b) of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97-22, §4(a), July 10, 1981, 95 Stat. 125; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99-433, title IV, §402(a), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 106-398, §1 [[div. A], title V, §504(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-101; Pub. L. 111-383, div. A, title V, §522(a), Jan. 7, 2011, 124 Stat. 4214.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111-383 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.”

2000—Subsec. (a)(1). Pub. L. 106-398, §1 [[div. A], title V, §504(a)(1)], struck out “who are on the active-duty

list” after “five or more officers” in second sentence and inserted after second sentence “Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list.”

Subsec. (a)(3). Pub. L. 106-398, §1 [[div. A], title V, §504(a)(2)], substituted “of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be” for “of that armed force, with the exact number of reserve officers to be” and “the Secretary’s discretion. Notwithstanding the first sentence of this paragraph,” for “his discretion, except that”.

1986—Subsec. (c). Pub. L. 99-433 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1981—Subsec. (a)(2). Pub. L. 97-22, §4(a)(1), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), a selection board” for “A selection board”, and added subpar. (B).

Subsec. (a)(3). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Pub. L. 97-22, §4(a)(2), inserted “, with the exact number of reserve officers to be determined by the Secretary of the military department concerned in his discretion” after “at least one reserve officer of that armed force” and inserted “who are eligible to serve on the board” after “the next higher grade”.

Subsec. (a)(4). Pub. L. 97-22, §4(a)(3), substituted “Except as provided in paragraphs (2) and (3)” for “Except as provided in paragraph (3)” and “officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve” for “retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board” and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97-22, §4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97-22, §4(a)(4), inserted “convened under section 611(a) of this title” after “selection boards”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §504(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any selection board convened under section 611(a) of title 10, United States Code, on or after August 1, 1981.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-433, title IV, §406(f), Oct. 1, 1986, 100 Stat. 1034, provided that: “The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 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.

§ 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of