

3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.”

Subsec. (b)(3). Pub. L. 113–291, § 502(b)(2), designated existing provisions as subpar. (A), substituted “three months” for “90 days”, and added subpars. (B) to (D).

1996—Subsec. (b)(3). Pub. L. 104–106 added par. (3).

1993—Subsec. (e)(2)(B). Pub. L. 103–160 inserted “(i)” after “grade and competitive category”, inserted “(ii)” after “of this title, or”, and struck out comma after “any provision of law”.

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as pars. (1) and (2)(A), in par. (2)(A) inserted “(except as provided in subparagraph (B))” after “under this section, such list”, and added subpars. (B) and (C).

1990—Subsec. (a)(3). Pub. L. 101–510, § 521(b)(2)(A), added par. (3).

Subsec. (b)(1). Pub. L. 101–510, § 521(b)(2)(B), inserted “or section 638a of this title” after “under this section”.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

“(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

“(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

“(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

“(4) who holds the regular grade of major general or rear admiral and has served at least three and one-half years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.”

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99–145 substituted “rear admiral (lower half)” for “commodore” wherever appearing.

1981—Subsec. (a)(3). Pub. L. 97–86 substituted “commodore” for “commodore admiral”.

Subsec. (a)(3), (4). Pub. L. 97–22 substituted “three and one-half years of active duty” for “four years of active duty”.

Subsecs. (b), (c). Pub. L. 97–86 substituted “commodore” for “commodore admiral” wherever appearing.

#### 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.

#### 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.

### § 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a)(1) The Secretary of Defense may authorize the Secretary of a military department to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(2) Any authority provided to the Secretary of a military department under paragraph (1) shall expire on the date specified by the Secretary of Defense, but such expiration date may not be later than December 31, 2025.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who have failed of selection for promotion at least one time and whose names are not on a list of officers recommended for promotion.

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion.

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 7311, 8323, or 9311 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(4) Convening selection boards under section 611(b) of this title to consider for early retirement or discharge regular officers on the ac-

tive-duty list in a grade below lieutenant colonel or commander—

- (A) who have served at least one year of active duty in the grade currently held; and
- (B) whose names are not on a list of officers recommended for promotion.

(c)(1) In the case of an action under subsection (b)(2), the total number of officers described in that subsection that a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

- (A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or
- (B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(4) In the case of an action under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned to waive the five-year period specified in section 638(c) of this title if the Secretary of Defense determines that it is necessary for the Secretary of that military department to have such authority in order to meet mission needs.

(d)(1) In the case of an action under subsection (b)(3), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

- (A) the names of all officers described in that subsection in a particular grade and competitive category; or
- (B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3) may not be more than 30 percent of the number of officers considered.

(3) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(3) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(4) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e)(1) In the case of action under subsection (b)(4), the Secretary of the military department concerned shall specify the total number of officers described in that subsection that a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement or discharge. Officers who are eligible, or are within two years of becoming eligible, to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484)), if selected by the board, shall be retired or retained until becoming eligible to retire under section 7311, 8323, or 9311 of this title, and those officers who are otherwise ineligible to retire under any provision of law shall, if selected by the board, be discharged.

(2) In the case of action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

- (A) the names of all eligible officers described in that subsection, whether or not they are eligible to be retired under any provision of law, in a particular grade and competitive category; or
- (B) the names of all eligible officers described in that subsection in a particular grade and competitive category, whether or not they are eligible to be retired under any provision of law, who are also in particular year groups, specialties, or retirement categories, or any combination thereof, with that competitive category.

(3) The number of officers specified under paragraph (1) may not be more than 30 percent of the number of officers considered.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(f) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added Pub. L. 101-510, div. A, title V, § 521(a)(1), Nov. 5, 1990, 104 Stat. 1559; amended Pub. L. 102-190, div. A, title V, § 503(b), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102-484, div. A, title V, § 503, title LXIV, § 4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; Pub. L. 103-160, div. A, title V, § 561(b), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105-261, div. A, title V, § 561(c), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106-398, § 1 [[div. A], title V, § 571(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 109-364, div. A, title VI, § 623(b), Oct. 17, 2006, 120 Stat. 2256; Pub. L. 112-239, div. A, title V, § 502, Jan. 2, 2013, 126 Stat. 1714; Pub. L. 113-66, div. A, title V, § 503(a), Dec. 26, 2013, 127 Stat. 750; Pub. L. 113-291, div. A, title V, § 503, Dec. 19, 2014, 128 Stat. 3355; Pub. L. 114-92, div. A, title V, § 503, Nov. 25, 2015, 129 Stat. 807; Pub. L. 114-328, div. A, title V, §§ 506, 508(b), Dec. 23, 2016, 130 Stat. 2108,

2109; Pub. L. 115–91, div. A, title V, § 503, Dec. 12, 2017, 131 Stat. 1373; Pub. L. 115–232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

## REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subssecs. (b)(3)(C) and (e)(1), is section 4403 of Pub. L. 102–484, which is set out as a note under section 1293 of this title.

## AMENDMENTS

2018—Subsecs. (b)(2)(C), (e)(1). Pub. L. 115–232 substituted “section 7311, 8323, or 9311” for “section 3911, 6323, or 8911”.

2017—Subsec. (c)(1). Pub. L. 115–91, § 503(1), added par. (1) and struck out former par. (1) which read as follows: “In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.”

Subsec. (d)(2). Pub. L. 115–91, § 503(2), added par. (2) and struck out former par. (2) which read as follows: “The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3). That number may not be more than 30 percent of the number of officers considered.”

2016—Subsec. (a)(2). Pub. L. 114–328, § 508(b), substituted “December 31, 2025” for “December 31, 2018”.

Subsec. (b)(4). Pub. L. 114–328, § 506(1), added par. (4).

Subsecs. (e), (f). Pub. L. 114–328, § 506(2), (3), added subsec. (e) and redesignated former subsec. (e) as (f).

2015—Subsec. (d)(2). Pub. L. 114–92 substituted “officers considered.” for “officers considered—

“(A) in each grade in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or

“(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.”

2014—Subsec. (d)(3) to (5). Pub. L. 113–291 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: “The total number of officers described in subsection (b)(3) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.”

2013—Subsec. (a). Pub. L. 112–239, § 502(1), designated existing provisions as par. (1), struck out “, during the period beginning on October 1, 1990, and ending on December 31, 2001, and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “military department”, and added par. (2).

Subsec. (b)(2)(A). Pub. L. 113–66, § 503(a)(1), substituted “have failed of selection for promotion at least one time and whose names are not on a list of officers recommended for promotion” for “would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times)”.

Subsec. (b)(2)(B). Pub. L. 113–66, § 503(a)(2), substituted “have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion” for “would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years)”.

Subsec. (b)(3), (4). Pub. L. 112–239, § 502(2), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “Suspending section 638(c) of this title.”

Subsec. (c)(4). Pub. L. 112–239, § 502(3), added par. (4).

Subsec. (d). Pub. L. 112–239, § 502(4), substituted “subsection (b)(3)” for “subsection (b)(4)” wherever appearing and “except that through December 31, 2018,” for “except that during the period beginning on October 1, 2006, and ending on December 31, 2012,” in subpars. (A) and (B) of par. (2).

2006—Subsec. (a). Pub. L. 109–364, § 623(b)(1), inserted “and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “December 31, 2001,”.

Subsec. (d)(2)(A). Pub. L. 109–364, § 623(b)(2)(A), inserted “, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade” before “; or” at end.

Subsec. (d)(2)(B). Pub. L. 109–364, § 623(b)(2)(B), inserted “, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade” before period at end.

2000—Subsec. (a). Pub. L. 106–398 substituted “December 31, 2001” for “September 30, 2001”.

1998—Subsec. (a). Pub. L. 105–261 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”.

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

1992—Subsec. (b)(4)(C). Pub. L. 102–484, § 4403(g)(2), inserted “(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)” after “any provision of law”.

Subsec. (c)(3). Pub. L. 102–484, § 503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102–190, § 503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.”

Subsec. (c). Pub. L. 102–190, § 503(b)(2), designated existing provisions as par. (1) and added par. (2).

## 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.

## § 638b. Voluntary retirement incentive

(A) INCENTIVE FOR VOLUNTARY RETIREMENT FOR CERTAIN OFFICERS.—The Secretary of Defense may authorize the Secretary of a military department to provide a voluntary retirement incentive payment in accordance with this section to an officer of the armed forces under that Secretary’s jurisdiction who is specified in subsection (c) as being eligible for such a payment.