

States Military Academy, Naval Academy, or Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service, see section 532(a)(5) of Pub. L. 106-65, set out as a note under section 7321 of this title.

§ 8372. Regular Navy and Regular Marine Corps; officers designated for limited duty; retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay

(a) MANDATORY RETIREMENT.—(1) Except as provided in subsection (k), each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer designated for limited duty shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of active duty for training in a reserve component.

(2) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of commander, has failed of selection for promotion to the grade of captain for the second time, and is not on a list of officers recommended for promotion to the grade of captain shall—

(A) if eligible for retirement as a commissioned officer under any provision of law, be retired under that provision of law on the date requested by the officer and approved by the Secretary of the Navy, except that the date of retirement may not be later than the first day of the seventh month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed for promotion to the grade of captain for a second time; or

(B) if not eligible for retirement as a commissioned officer, be retired on the date requested by the officer and approved by the Secretary of the Navy after the officer becomes eligible for retirement as a commissioned officer, except that the date of retirement may not be later than the first day of the seventh calendar month beginning after the month in which the officer becomes eligible for retirement as a commissioned officer.

(3) Except as provided in subsection (k), if not retired earlier, a regular officer of the Navy designated for limited duty who is serving in the grade of commander and is not on a list of officers recommended for promotion to the grade of captain shall be retired on the last day of the month following the month in which the officer completes 35 years of active naval service, exclusive of active duty for training in a reserve component.

(4) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of captain shall, if not retired sooner, be retired on the last day of the month following the month in which the officer completes 38 years of active naval service, exclusive of active duty for training in a reserve component.

(b) LIEUTENANT COMMANDERS AND MAJORS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—EX-

cept as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant commander who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of major who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel, respectively, for the second time and whose name is not on a promotion list shall be retired, if eligible to retire, or be discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.

(c) RETIRED GRADE AND RETIRED PAY.—Each officer retired under subsection (a) or (b)—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade determined under section 1370 of this title; and

(2) is entitled to retired pay computed under section 8333 of this title.

(d) NAVY LIEUTENANTS AND MARINE CORPS CAPTAINS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant who is an officer designated for limited duty, and each regular officer on the active duty list of the Marine Corps serving in the grade of captain who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time and whose name is not on a list of officers recommended for promotion shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

(e) OFFICERS IN PAY GRADES O-2 AND O-1 WHO TWICE FAIL OF SELECTION FOR PROMOTION OR ARE FOUND NOT QUALIFIED FOR PROMOTION.—(1) Each regular officer on the active-duty list of the Navy serving in the grade of lieutenant (junior grade) who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of first lieutenant who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant (in the case of an officer of the Navy) or captain (in the case of an officer of the Marine Corps) for the second time shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as

having failed of selection for promotion to the grade of lieutenant or captain, respectively, for the second time.

(2) Each regular officer on the active-duty list of the Navy serving in the grade of ensign who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of second lieutenant who is an officer designated for limited duty, who is found not qualified for promotion to the grade of lieutenant (junior grade) (in the case of an officer of the Navy) or first lieutenant (in the case of an officer of the Marine Corps) shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the officer was found not qualified for promotion.

(f) 18-YEAR RETIREMENT SANCTUARY.—If an officer subject to discharge under subsection (b), (d), or (e) is (as of the date on which the officer is to be discharged) not eligible for retirement under any provision of law but is within two years of qualifying for retirement under section 8323 of this title, the officer shall be retained on active duty as an officer designated for limited duty until becoming qualified for retirement under that section and shall then be retired under that section, unless the officer is sooner retired or discharged under another provision of law or the officer reverts to a warrant officer grade pursuant to subsection (h).

(g) REENLISTMENT FOR LDOS APPOINTED FROM ENLISTED GRADES.—(1) An officer subject to discharge under subsection (b), (d), or (e) who is described in paragraph (2) may, upon the officer's request and in the discretion of the Secretary of the Navy, be enlisted in a grade prescribed by the Secretary upon the officer's discharge pursuant to such subsection.

(2) An officer described in this paragraph is an officer who—

(A) is not eligible for retirement under any provision of law;

(B) is not covered by subsection (f); and

(C) was in an enlisted grade when first appointed as an officer designated for limited duty.

(h) REVERSION TO WARRANT OFFICER GRADE FOR LDOS APPOINTED FROM WARRANT OFFICER GRADES.—An officer subject to discharge under subsection (b), (d), or (e) (including an officer otherwise subject to retention under subsection (f) who is not eligible for retirement under any provision of law and who had the permanent status of a warrant officer when first appointed as an officer designated for limited duty may, at the officer's option, revert to the warrant officer grade and status that the officer would hold if the officer had not been appointed as an officer designated for limited duty.

(i) DETERMINATION OF GRADE AND STATUS OF OFFICERS REVERTING TO PRIOR STATUS.—In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

(j) SEPARATION PAY FOR OFFICERS DISCHARGED.—An officer discharged under this section

is entitled, if eligible therefor, to separation pay under section 1174(a)(1) of this title.

(k) SELECTIVE RETENTION BOARDS FOR LDOS.—Under such regulations as he may prescribe, whenever the needs of the service require, the Secretary of the Navy may defer the retirement under subsection (a) or (b) or the discharge under subsection (b) or (d) of any officer designated for limited duty upon recommendation of a board of officers convened under section 611(b) of this title and with the consent of the officer concerned. An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier.

(l) APPLICABILITY OF SECTION ONLY TO PERMANENT LDOS.—This section does not apply to officers designated for limited duty under section 8146 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 405, §6383; Pub. L. 85-422, §11(a)(6)(D), May 20, 1958, 72 Stat. 131; Pub. L. 86-616, §5(2), July 12, 1960, 74 Stat. 390; Pub. L. 87-509, §4(b), June 28, 1962, 76 Stat. 121; Pub. L. 88-132, §5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96-342, title VIII, §813(d)(7), Sept. 8, 1980, 94 Stat. 1106; Pub. L. 96-513, title III, §336, title V, §513(17), Dec. 12, 1980, 94 Stat. 2898, 2932; Pub. L. 98-94, title IX, §922(a)(11), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98-525, title V, §529(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99-348, title II, §203(b)(7), July 1, 1986, 100 Stat. 696; Pub. L. 101-510, div. A, title V, §501(f)(2), Nov. 5, 1990, 104 Stat. 1551; Pub. L. 102-484, div. A, title V, §504(c), (d), Oct. 23, 1992, 106 Stat. 2403, 2404; Pub. L. 103-160, div. A, title V, §561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103-337, div. A, title V, §503, Oct. 5, 1994, 108 Stat. 2749; Pub. L. 105-261, div. A, title V, §504(c), (d), Oct. 17, 1998, 112 Stat. 2004; renumbered §8372 and amended Pub. L. 115-232, div. A, title VIII, §§807(b)(16), 809(a), Aug. 13, 2018, 132 Stat. 1836, 1840.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6383(a)-(h)	34 U.S.C. 410j(a).	Aug. 7, 1947, ch. 512, §312(a), 61 Stat. 858.
	34 U.S.C. 626-1(a) (1st sentence).	Aug. 7, 1947, ch. 512, §314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, §205, 68 Stat. 68.
	34 U.S.C. 626-1(o).	Aug. 7, 1947, ch. 512, §314(o), 61 Stat. 865.
	34 U.S.C. 3c(b) (1st sentence).	Aug. 7, 1947, ch. 512, §302(b) (1st sentence), 61 Stat. 829.
6383(a)	34 U.S.C. 410j(d).	Aug. 7, 1947, ch. 512, §312(d), 61 Stat. 859.
6383(b)	34 U.S.C. 410j(f) (less provisos).	Aug. 7, 1947, ch. 512, §312(f) (less provisos), 61 Stat. 859.
6383(c)	34 U.S.C. 389 (1st sentence as applicable to grade).	R.S. 1457 (1st sentence as applicable to grade).
	34 U.S.C. 410j(g) (less provisos).	Aug. 7, 1947, ch. 512, §312(g) (less provisos), 61 Stat. 860.
	34 U.S.C. 3c(j).	Aug. 7, 1947, ch. 512, §312(j), 61 Stat. 831.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6383(d), (e), (f).	34 U.S.C. 410j(h) (as applicable to officers designated for limited duty who fail of selection, less provisos).	Aug. 7, 1947, ch. 512, §312(h) (as applicable to officers designated for limited duty who fail of selection less provisos), 61 Stat. 860.
	34 U.S.C. 410j(m) (less applicability to persons discharged under 34 U.S.C. 410j(l)).	Aug. 7, 1947, ch. 512, §312(m); added June 18, 1954, ch. 311, (b) (less applicability to persons discharged under §312(l)), 68 Stat. 257.
6383(g), (h).	34 U.S.C. 410j(f) (provisos).	Aug. 7, 1947, ch. 512, §312(f) (provisos), 61 Stat. 859.
	34 U.S.C. 410j(h) (2d proviso as applicable to officers designated for limited duty who fail of selection).	Aug. 7, 1947, ch. 512, §312(h) (2d proviso as applicable to officers designated for limited duty who fail of selection), 61 Stat. 860.

In subsection (a) the words “if not otherwise retired pursuant to law” are omitted as surplusage.

In subsection (c) the pay provisions are worded so as to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.).

The second proviso in §312(g) of the Officer Personnel Act of 1947 (34 U.S.C. 410j(g)), relating to the retired pay of officers commissioned in the Regular Navy under the Act of April 18, 1946, ch. 141, as amended (34 U.S.C. 15), and officers commissioned in the Regular Navy while serving on active duty as officers of the Naval Reserve, is not codified in this section because it is inapplicable to officers designated for limited duty. The only authority to appoint limited duty officers is §404(a) of the Officer Personnel Act of 1947 (34 U.S.C. 211c(a)). Naval Reserve officers are not eligible for such appointments. Hence there can be no limited duty officers in the categories mentioned in the proviso.

In subsection (f) the words “to which he would otherwise become entitled” are omitted as surplusage and the words “based on the service for which he has received payment” are substituted for the words “attributable to the active service in respect of which lump-sum payment shall have been made to him”.

The second proviso in §312(f) of the Officer Personnel Act of 1947 (34 U.S.C. 410j(f)), which provides that officers who exercise their option to revert to a warrant officer grade shall be retired upon completing 30 years of active naval service, is omitted as superseded by §14(b)(2) of the Warrant Officer Act of 1954 (34 U.S.C. 430(b)(2)), codified in §1305 of this title.

PRIOR PROVISIONS

A prior section 8372, added Pub. L. 85-861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1527; amended Pub. L. 86-559, §1(57), June 30, 1960, 74 Stat. 276, related to promotion of officers with special qualifications to grade of captain, major, lieutenant colonel, or colonel of Air Force Reserve, prior to repeal by Pub. L. 103-337, div. A, title XVI, §1629(c)(1), Oct. 5, 1994, 108 Stat. 2963, effective Oct. 1, 1996. See section 14301 et seq. of this title.

AMENDMENTS

2018—Pub. L. 115-232, §807(b)(16), renumbered section 6383 of this title as this section.

Subsec. (c)(2). Pub. L. 115-232, §809(a), substituted “section 8333” for “section 6333”.

Subsec. (f). Pub. L. 115-232, §809(a), substituted “section 8323” for “section 6323”.

Subsec. (l). Pub. L. 115-232, §809(a), substituted “section 8146” for “section 5596”.

1998—Subsec. (a)(5). Pub. L. 105-261, §504(c), struck out par. (5) which read as follows: “Paragraphs (2) through (4) shall be effective only during the period beginning on July 1, 1993, and ending on October 1, 1999.”

Subsec. (k). Pub. L. 105-261, §504(d), struck out at end “During the period beginning on July 1, 1993, and ending on October 1, 1999, an officer of the Navy in the

grade of commander or captain whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond age 62 or, if earlier, 28 years of active commissioned service if in the grade of commander or 30 years of active commissioned service if in the grade of captain.”

1994—Subsec. (a). Pub. L. 103-337, §503(c)(1), (d)(1), inserted heading and substituted “Except as provided in subsection (k)” for “Except as provided in subsection (i)” in pars. (1) to (4).

Subsec. (b). Pub. L. 103-337, §503(c)(2), (d)(2), inserted heading and substituted “Except as provided in subsections (f) and (k)” for “Except as provided in subsection (i)”.

Subsec. (c). Pub. L. 103-337, §503(d)(3), inserted heading.

Subsec. (d). Pub. L. 103-337, §503(c)(2), (d)(4), inserted heading and substituted “Except as provided in subsections (f) and (k)” for “Except as provided in subsection (i)”.

Subsec. (e). Pub. L. 103-337, §503(d)(5), inserted heading.

Subsec. (f). Pub. L. 103-337, §503(a)(2), added subsec. (f) and struck out former subsec. (f) which read as follows: “If any officer subject to discharge under subsection (d) or (e) had the permanent status of a warrant officer when first appointed as an officer designated for limited duty, he has the option, instead of being discharged, of reverting to the grade and status he would hold if he had not been so appointed. If any such officer had a permanent grade below the grade of warrant officer, W-1, when first so appointed, he has the option, instead of being discharged, of reverting to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W-1.”

Subsecs. (g), (h). Pub. L. 103-337, §503(a)(2), added subsecs. (g) and (h). Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 103-337, §503(a)(1), (d)(6), redesignated subsec. (g) as (i) and inserted heading. Former subsec. (i) redesignated (k).

Subsec. (j). Pub. L. 103-337, §503(a)(1), (d)(7), redesignated subsec. (h) as (j) and inserted heading. Former subsec. (j) redesignated (l).

Subsec. (k). Pub. L. 103-337, §503(a)(1), (b), (d)(8), redesignated subsec. (i) as (k), inserted heading, and substituted “or the discharge under subsection (b) or (d)” for “or the discharge under subsection (d)”.

Subsec. (l). Pub. L. 103-337, §503(a)(1), (d)(9), redesignated subsec. (j) as (l) and inserted heading.

1993—Subsecs. (a)(5), (i). Pub. L. 103-160 substituted “October 1, 1999” for “October 1, 1995”.

1992—Subsec. (a). Pub. L. 102-484, §504(c), designated existing provisions as par. (1) and added pars. (2) to (5).

Subsec. (i). Pub. L. 102-484, §504(d), inserted at end “During the period beginning on July 1, 1993, and ending on October 1, 1995, an officer of the Navy in the grade of commander or captain whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond age 62 or, if earlier, 28 years of active commissioned service if in the grade of commander or 30 years of active commissioned service if in the grade of captain.”

1990—Subsec. (h). Pub. L. 101-510 substituted “section 1174(a)(1)” for “section 1174(a)”.

1986—Subsec. (c)(2). Pub. L. 99-348, §203(b)(7)(A), substituted provision that retired pay be computed under section 6333 for provision that retired pay, in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay to which he would have been entitled if serving on active duty in the grade in which he retired, or in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d), which rates were to be multiplied by the number of years of

service credited under section 1405, but such retired pay was not to be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay was based.

Subsec. (k). Pub. L. 99-348, § 203(b)(7)(B), struck out subsec. (k) which provided that retired pay computed under subsec. (c), if not a multiple of \$1, was to be rounded to the next lower multiple of \$1.

1984—Subsec. (a). Pub. L. 98-525, § 529(c)(1), substituted “each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer” for “each regular officer of the Navy or Marine Corps”.

Subsec. (d). Pub. L. 98-525, § 529(c)(2), substituted “Except as provided in subsection (i), each” for “Each”.

Subsec. (i). Pub. L. 98-525, § 529(c)(3), inserted “or the discharge under subsection (d)” after “the retirement under subsection (a) or (b)” and substituted “An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier” for “An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 24 years active commissioned service, if in the grade of lieutenant commander or major or 28 years active commissioned service, if in the grade of commander or lieutenant colonel, or beyond age 62, whichever is earlier”.

1983—Subsec. (k). Pub. L. 98-94 added subsec. (k).

1980—Pub. L. 96-513, § 336(i), struck out “or severance” before “pay” in section catchline.

Subsec. (a). Pub. L. 96-513, § 336(a), substituted “Except as provided in subsection (i), each regular officer of the Navy or Marine Corps designated for limited duty” for “Each officer designated for limited duty on the active list of the Navy or Marine Corps”.

Subsec. (b). Pub. L. 96-513, § 336(b), authorized the discharge of certain officers considered as having failed of selection for promotion and provided that in cases of retirement such retirements were to occur on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which such officer was considered as having failed of selection.

Subsec. (c)(1). Pub. L. 96-513, § 336(c), substituted “determined under section 1370 of this title” for “in which he was serving at the time of retirement”.

Subsec. (c)(2). Pub. L. 96-513, § 513(17), substituted “September 8, 1980” for “the date of the enactment of the Department of Defense Authorization Act, 1981” wherever appearing.

Pub. L. 96-342, designated existing provisions as subpar. (A), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

Subsec. (d). Pub. L. 96-513, § 336(d), provided that Navy lieutenants designated for limited duty and Marine Corps captains similarly designated who were considered as having failed of selection for promotion were to be honorably discharged on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which he was considered as having failed of selection.

Subsec. (e). Pub. L. 96-513, § 336(d), designated existing provisions as par. (1), provided that Navy lieutenants (junior grade) designated for limited duty and Marine Corps first lieutenants similarly designated who were

considered as having failed of selection for promotion were to be honorably discharged on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which he was considered as having failed of selection, and added par. (2).

Subsec. (f). Pub. L. 96-513, § 336(e), (f), redesignated subsec. (g) as (f), substituted “discharge under subsection (d)” for “retirement or discharge under subsections (b), (d)” and “instead of being discharged” for “instead of being retired or discharged” in two places, and struck out former subsec. (f) authorizing a lump-sum severance payment to certain discharged officers.

Subsecs. (g) to (j). Pub. L. 96-513, § 336(f)–(h), added subsecs. (h) to (j) and redesignated existing subsecs. (g) and (h) as (f) and (g), respectively.

1963—Subsec. (c)(2). Pub. L. 88-132 substituted “of” for “to which he would be entitled if serving on active duty in” after “2½ percent of the basic pay”.

1962—Subsec. (f). Pub. L. 87-509 limited the lump-sum payment to not more than \$15,000.

1960—Subsec. (d). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

Subsec. (e). Pub. L. 86-616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time.

1958—Subsec. (c)(2). Pub. L. 85-422 substituted “that may be credited to him under section 1405 of this title” for “creditable for basic pay”.

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 1983 AMENDMENT

Amendment by Pub. L. 98-94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98-94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 336 of Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, and amendment by section 513(17) of Pub. L. 96-513 effective Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-422 effective June 1, 1958, see section 9 of Pub. L. 85-422.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For transition provisions relating to limited-duty officers of the Regular Navy or Regular Marine Corps, see section 616 of Pub. L. 96-513, set out as a note under section 611 of this title.

§ 8373. Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

(a) Subject to section 12645 of this title, an officer in an active status in the Navy Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list may, in the discretion of the Secretary of the Navy, be eliminated from an active status or released from active duty and placed on the reserve active-status list.

(b) An officer who is to be eliminated from an active status under subsection (a) shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Navy Reserve or the Marine Corps Reserve.

(c)(1) An officer in an active status in the Navy Reserve in the permanent grade of lieutenant commander or commander, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or lieutenant colonel, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Navy Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that specified below for the permanent grade in which he is serving:

Grade		Total commissioned service
Navy	Marine Corps	
Commander	Lieutenant colonel.	28 years.
Lieutenant commander	Major	20 years.

(2) Notwithstanding the first sentence of paragraph (1), the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve, but the duration of such deferment for any individual officer may not be in excess of five years.

(3) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or commander in the Navy Reserve or in the permanent grade of major or lieutenant colonel in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 12732 of this title during the period of such deferment.

(4) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge

under this subsection of such number of officers serving in the permanent grade of commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Navy Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Navy Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regular officer on the active-duty list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W-5.

(Added Pub. L. 85-861, §1(144)(A), Sept. 2, 1958, 72 Stat. 1509, §6389; amended Pub. L. 86-559, §1(46), June 30, 1960, 74 Stat. 274; Pub. L. 96-513, title III, §337(a), Dec. 12, 1980, 94 Stat. 2900; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title V, §528(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102-190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103-337, div. A, title XVI, §§1628, 1673(c)(1), Oct. 5, 1994, 108 Stat. 2962, 3016; Pub. L. 104-106, div. A, title XV, §1501(c)(25), Feb. 10, 1996, 110 Stat. 499; Pub. L. 109-163, div. A, title V, §515(b)(1)(M), (3)(C), Jan. 6, 2006, 119 Stat. 3233, 3234; renumbered §8373, Pub. L. 115-232, div. A, title VIII, §807(b)(16), Aug. 13, 2018, 132 Stat. 1836.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6389(a)	50:1311(c) (1st sentence).	Sept. 3, 1954, ch. 1257, §411(c) (1st sentence), 68 Stat. 1170.
6389(b)	50:1311(a) (as applicable to 1311(c)).	Sept. 3, 1954, ch. 1257, §411(a) (as applicable to 411(c)), 68 Stat. 1169.
6389(c)	50:1311(c) (2d sentence).	Sept. 3, 1954, ch. 1257, §411(c) (2d sentence), 68 Stat. 1170.
6389(d)	50:1311(c) (less 1st and 2d sentences).	Sept. 3, 1954, ch. 1257, §411(c) (less 1st and 2d sentences), 68 Stat. 1170.
6389(e)	[No source].	[No source].

In subsection (a), the words “who is considered as having twice failed of selection for promotion” are substituted for the words “after failing of selection for promotion * * * a second time” to conform to similar statements in this title. (See the revision note on section 5776.) The words “may be retained in” are omitted as surplusage, since the authority to eliminate such of-