

§ 12643. Boards for appointment, promotion, and certain other purposes: composition

(a) Except as provided in section 612(a)(3) of this title and except for boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 11, §266; Pub. L. 96-513, title V, §501(4), Dec. 12, 1980, 94 Stat. 2907; Pub. L. 97-22, §2(c), July 10, 1981, 95 Stat. 124; renumbered §12643, Pub. L. 103-337, div. A, title XVI, §1662(h)(2), Oct. 5, 1994, 108 Stat. 2996.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows include 266(a) and 266(b) with their respective code and statute references.

In subsection (a), the words "under * * * prescribed" are substituted for the words "in accordance * * * established".

In subsection (b), the words "in rank" and "by that board" are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 266 of this title as this section.

1981—Subsec. (a). Pub. L. 97-22 substituted "Except as provided in section 612(a)(3) of this title and except for Boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion" for "Except as provided in section 612(a)(3) of this title, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense".

1980—Subsec. (a). Pub. L. 96-513 substituted "Except as provided in section 612(a)(3) of this title, each" for "Each".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 12644. Members physically not qualified for active duty: discharge or transfer to retired status

Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, §1004; Pub. L. 86-603, §1(1), July 7, 1960, 74 Stat. 357; Pub. L. 103-160, div. A, title V, §519, Nov. 30, 1993, 107 Stat. 1651; renumbered §12644 and amended Pub. L. 103-337, div. A, title XVI, §§1661(a)(4), 1662(h)(2), (4)(B), Oct. 5, 1994, 108 Stat. 2980, 2996, 2997.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows include 1004(a), 1004(b), and 1004(c) with their respective code and statute references.

In subsection (a), the words "Each * * * who is not on active duty" are substituted for the words "when not on active duty all". The words "examined as to his physical fitness" are substituted for the words "given physical examinations". The words "be required to" are omitted as surplusage. The words "execute and" are inserted for clarity.

In subsection (c), the words "under his jurisdiction" are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103-337, §1662(h)(2), (4)(B), renumbered section 1004 of this title as this section and substituted "Members physically not qualified for active duty: discharge or transfer to retired status" for "Physical examination" as section catchline.

Pub. L. 103-337, §1661(a)(4), struck out "(c)" before "Except as otherwise provided" and struck out subsecs. (a) and (b) which read as follows:

"(a) Each member of the Ready Reserve who is not on active duty shall—

"(1) be examined as to his physical fitness every five years, or more often as the Secretary concerned considers necessary; and

"(2) execute and submit annually a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually a certificate of physical condition.

"(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty."

1993—Subsec. (a)(1). Pub. L. 103-160 substituted "five years" for "four years".

1960—Subsec. (a). Pub. L. 86-603 limited the requirement for a physical examination every four years, and for the annual execution of a certificate of physical condition, to the Ready Reserve, and also required each Reserve in an active status, or on an inactive status list, who is not on active duty to execute and submit annually a certificate of physical condition.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L.

103-337, set out as an Effective Date note under section 10001 of this title.

§ 12645. Commissioned officers: retention until completion of required service

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chapter 843, 1407, 1409, or 1411 of this title or chapter 21¹ of title 14. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

(1) a commissioned warrant officer;

(2) an officer on the active-duty list or a reserve active-status list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy;

(3) an officer on the active-duty list or reserve active-status list who has failed of selection for promotion for the second time to the grade of captain, in the case of an officer of the Army, Air Force, or Marine Corps, or to the grade of lieutenant, in the case of an officer of the Navy; or

(4) an officer whose discharge or transfer from an active status is required by law.

(Added Pub. L. 85-861, §1(22)(B), Sept. 2, 1958, 72 Stat. 1444, §1005; amended Pub. L. 93-586, §2, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 98-525, title V, §528(a), Oct. 19, 1984, 98 Stat. 2525; renumbered §12645 and amended Pub. L. 103-337, div. A, title XVI, §§1627, 1662(h)(2), 1675(d)(2), Oct. 5, 1994, 108 Stat. 2962, 2996, 3018; Pub. L. 104-106, div. A, title XV, §1501(a)(4), Feb. 10, 1996, 110 Stat. 495; Pub. L. 104-201, div. A, title V, §544(b), Sept. 23, 1996, 110 Stat. 2523; Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1005	50:1181(1) (as applicable to 50: 1194). 50:1194.	Sept. 3, 1954, ch. 1257, §102(1) (as applicable to §204), 204, 68 Stat. 1149, 1151.

The word “subsequently” is omitted as surplusage.

REFERENCES IN TEXT

Chapter 21 of title 14, referred to in text, was comprised of sections 701 to 713 and 720 to 746, prior to the renumbering of such sections as sections 3701 to 3714 and 3731 to 3757, respectively, of title 14 by Pub. L. 115-282, title I, §118(b), Dec. 4, 2018, 132 Stat. 4233. After renumbering, such sections now comprise chapter 37 (designated as chapter “1” in chapter analysis) of title 14.

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232 substituted “under chapter 843,” for “under chapter 573.”

¹ See References in Text note below.

1996—Subsec. (b)(2). Pub. L. 104-201 inserted “or a reserve active-status list” after “active-duty list”.

Subsec. (b)(3), (4). Pub. L. 104-106 made technical correction to directory language of Pub. L. 103-337, §1627. See 1994 Amendment note below.

1994—Pub. L. 103-337, §1662(h)(2), renumbered section 1005 of this title as this section.

Subsec. (a). Pub. L. 103-337, §1675(d)(2), substituted “573, 1407, 1409, or 1411” for “337, 361, 363, 573, 837, 861, or 863”.

Subsec. (b)(3), (4). Pub. L. 103-337, §1627, as amended by Pub. L. 104-106, added pars. (3) and (4).

1984—Pub. L. 98-525 substituted “(a) Except as provided in subsection (b), a reserve commissioned officer” for “A reserve commissioned officer, other than a commissioned warrant officer,” struck out the comma before “may”, and added subsec. (b).

1975—Pub. L. 93-586 inserted reference to chapter 21 of title 14.

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 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 OF 1994 AMENDMENT

Amendment by sections 1627 and 1675(d)(2) of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

§ 12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 843, 1407, or 1409 of this title or chapter 21¹ of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(b) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 19, but less than 20, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 843, 1407, or 1409 of this title or chapter 21¹ of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

¹ See References in Text note below.