

§ 521(b)(1), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 110-181, div. A, title V, § 504, Jan. 28, 2008, 122 Stat. 95; Pub. L. 115-232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116-283, div. A, title IX, § 924(b)(3)(K), Jan. 1, 2021, 134 Stat. 3821.)

### Editorial Notes

#### AMENDMENTS

2021—Subsec. (a)(2). Pub. L. 116-283 substituted “Marine Corps, or Space Force” for “or Marine Corps”.

2018—Subsec. (a)(5). Pub. L. 115-232 substituted “section 7311, 8323, or 9311” for “section 3911, 6323, or 8911” in concluding provisions.

2008—Subsec. (b)(3). Pub. L. 110-181 substituted “except as provided under section 1251 or 1253 of this title” for “but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer’s sixty-second birthday”.

1990—Subsec. (c). Pub. L. 101-510, § 521(b)(1)(A), inserted at end “The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.”

Subsecs. (d), (e). Pub. L. 101-510, § 521(b)(1)(B), (C), added subsec. (d) and redesignated former subsec. (d) as (e).

1985—Subsec. (b)(2). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1984—Subsec. (a)(2). Pub. L. 98-525, § 1405(15)(A), substituted “20” for “twenty”.

Subsec. (a)(3). Pub. L. 98-525, § 1405(15)(B), substituted “24” for “twenty-four”.

1981—Subsec. (b)(1). Pub. L. 97-22, § 4(e)(1), substituted “section 633 or 634” for “section 633, 634, 635, or 636”.

Subsec. (b)(2). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Pub. L. 97-22, § 4(e)(2), inserted provision that an officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, commodore admiral, major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned and struck out requirement that the deferral of the retirement of an officer subject to retirement under section 635 or 636 of this title serving in a grade above major general or rear admiral was subject to the needs of the service.

### Statutory Notes and Related Subsidiaries

#### 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 subchapter 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.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly

transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

### § 637a. Continuation on active duty: officers in certain military specialties and career tracks

(a) IN GENERAL.—The Secretary of the military department concerned may authorize an officer in a grade above grade O-2 to remain on active duty after the date otherwise provided for the separation or retirement of the officer in section 632, 633, 634, 635, or 636 of this title, as applicable, if the officer has a military occupational specialty, rating, or specialty code in a military specialty designated pursuant to subsection (b).

(b) MILITARY SPECIALTIES.—Each Secretary of a military department shall designate the military specialties in which a military occupational specialty, rating, or specialty code, as applicable, assigned to members of the armed forces under the jurisdiction of such Secretary authorizes the members to be eligible for continuation on active duty as provided in subsection (a).

(c) DURATION OF CONTINUATION.—An officer continued on active duty pursuant to this section shall, if not earlier retired, be retired on the first day of the month after the month in which the officer completes 40 years of active service.

(d) REGULATIONS.—The Secretaries of the military departments shall carry out this section in accordance with regulations prescribed by the Secretary of Defense. The regulations shall specify the criteria to be used by the Secretaries of the military departments in designating military specialties for purposes of subsection (b).

(Added Pub. L. 114-328, div. A, title V, § 505(a)(1), Dec. 23, 2016, 130 Stat. 2107; amended Pub. L. 115-232, div. A, title V, § 506, title X, § 1081(a)(8), Aug. 13, 2018, 132 Stat. 1743, 1983; Pub. L. 116-92, div. A, title V, § 504, Dec. 20, 2019, 133 Stat. 1345.)

### Editorial Notes

#### AMENDMENTS

2019—Subsec. (a). Pub. L. 116-92 inserted “separation or” after “provided for the”.

2018—Subsec. (a). Pub. L. 115-232, § 506, substituted “grade O-2” for “grade O-4” and inserted “632,” before “633.”

Subsec. (d). Pub. L. 115-232, § 1081(a)(8), substituted “specialties” for “specialities”.

### § 638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, Marine Corps, or Space Force may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who 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.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who 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.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who 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.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a selection board convened under section 611(b) of this title 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.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, Marine Corps, or Space Force may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1)(A) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(B) If an officer described in subparagraph (A) is not eligible for retirement under any provision of law, the officer shall be retained on active duty until the officer is qualified for retirement under section 7311, 8323, or 9311 of this title, and then be retired under that section, unless the officer is sooner retired or discharged under some other provision of law, with such retirement under that section occurring not later than the later of the following:

(i) The first day of the month beginning after the month in which the officer becomes qualified for retirement under that section.

(ii) The first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date

shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(3)(A) The Secretary concerned may defer for not more than three months the retirement of an officer otherwise approved for early retirement under this section or section 638a of this title in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(B) An officer recommended for early retirement under paragraph (1)(A) or section 638a of this title, if approved for deferral under subparagraph (A), shall be retired on the date requested by the officer, and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(C) The Secretary concerned may defer the retirement of an officer otherwise approved for early retirement under paragraph (1)(B), but in no case later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(D) An officer recommended for early retirement under paragraph (2), if approved for deferral under subparagraph (A), shall be retired on the date requested by the officer, and approved by the Secretary concerned, which date shall be not later than the first day of the thirteenth calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

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

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in subparagraph (B)) shall include each officer on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(B) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 7311, 8323, or 9311 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(C) An officer not considered by a selection board convened under section 611(b) of this title by reason of subparagraph (B) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2864; amended Pub. L. 97-22, §4(f), July 10, 1981, 95 Stat. 127; 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. 100-456, div. A, title V, §504, Sept. 29, 1988, 102 Stat. 1967; Pub. L. 101-510, div. A, title V, §521(b)(2), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 102-190, div. A, title V, §503(a), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 103-160, div. A, title V, §506, Nov. 30, 1993, 107 Stat. 1646; Pub. L. 104-106, div. A, title V, §504(b), Feb. 10, 1996, 110 Stat. 295; Pub. L. 113-291, div. A, title V, §502(b), Dec. 19, 2014, 128 Stat. 3354; Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840; Pub. L. 116-283, div. A, title IX, §924(b)(3)(L), Jan. 1, 2021, 134 Stat. 3821.)

### Editorial Notes

#### AMENDMENTS

2021—Subsec. (a)(1), (3). Pub. L. 116-283 substituted “Marine Corps, or Space Force” for “or Marine Corps” in introductory provisions of par. (1) and in par. (3).

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

2014—Subsec. (b)(1). Pub. L. 113-291, §502(b)(1), added par. (1) and struck out former par. (1) which read as follows: “An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

“(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

“(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 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.

### Statutory Notes and Related Subsidiaries

#### 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.