AMENDMENTS

1992—Subsecs. (a), (b), Pub. L. 102–484, § 506(a)(1), substituted “service obligation” for “active duty obligation”.

Subsec. (c), Pub. L. 102–484, § 506(a)(2), substituted “the term ‘service obligation’ means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve” for “the term ‘active duty obligation’ means the period of active duty”.

1990—Subsec. (a), Pub. L. 101–510, § 1484(k)(3)(A), substituted “or” for “and” before “6 years”.

Subsec. (c), Pub. L. 101–510, § 1484(k)(3)(B), inserted a comma after first reference to “training” in pars. (1) and (2) and after first reference to “naval flight officer” in par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 506(b) of Pub. L. 102–484 provided that: “The amendments made by subsection (a) [amending this section] shall take effect as of November 29, 1989.”

EFFECTIVE DATE

Section 634(b) of Pub. L. 101–189 provided that:

“(1) Except as provided in paragraphs (2) and (3), section 653 of title 10, United States Code, as added by subsection (a)(1), shall apply to persons who begin undergraduate pilot training, undergraduate navigator training, or undergraduate naval flight officer training, as the case may be, after September 30, 1990.

“(2) Such section shall apply to persons who graduate from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the Coast Guard Academy after December 31, 1991, and to persons who satisfactorily complete the academic and military requirements of the Senior Reserve Officers’ Training Corps program (provided for in chapter 103 of title 10, United States Code) after December 31, 1991.

“(3) The minimum service requirements provided for such section shall not apply in the case of any person who entered into an agreement with the Secretary concerned before October 1, 1990, and who is obligated under the terms of such agreement to serve on active duty for a period less than the applicable period specified in section 653 of such title.

“(4) For purposes of this subsection, the term ‘Secretary concerned’ has the meaning given that term in section 101(b) of title 10, United States Code.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 654. Policy concerning homosexuality in
the armed forces

(a) FINDINGS.—Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that—

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member’s life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces’ high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.
(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accompanied by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) ENTRY STANDARDS AND DOCUMENTS.—(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) REQUIRED BRIEFINGS.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

(2) separation of the member would not be in the best interest of the armed forces.

(f) DEFINITIONS.—In this section:

(1) The term "homosexual" means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms "gay" and "lesbian".

(2) The term "bisexual" means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term "homosexual act" means—

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).


REPEAL OF SECTION


REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a)(10), is classified to chapter 47 (§ 801 et seq.) of this title.

DON'T ASK, DON'T TELL REPEAL


"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Don't Ask, Don't Tell Repeal Act of 2010'.

"SEC. 2. DEPARTMENT OF DEFENSE POLICY CONCERNING HOMOSEXUALITY IN THE ARMED FORCES.

"(a) COMPREHENSIVE REVIEW ON THE IMPLEMENTATION OF A REPEAL OF 10 U.S.C. 654.—


"(2) OBJECTIVES AND SCOPE OF REVIEW.—The Terms of Reference accompanying the Secretary's memorandum established the following objectives and scope of the ordered review:

"(A) Determine any impacts to military readiness, military effectiveness and unit cohesion, recruiting/retention, and family readiness that may result from repeal of the law and recommend any actions that should be taken in light of such impacts.

"(B) Determine leadership, guidance, and training on standards of conduct and new policies.

"(C) Determine appropriate changes to existing policies and regulations, including but not limited to issues regarding personnel management, leadership and training, facilities, investigations, and benefits.

"(D) Recommend appropriate changes (if any) to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.].."
§ 655

TITLE 10—ARMED FORCES

Page 342

“§ 655. Designation of persons having interest in status of a missing member

(a) The Secretary concerned shall, upon the enlistment or appointment of a person in the armed forces, require that the person specify in writing the person or persons, if any, other than that person’s primary next of kin or immediate family, to whom information on the whereabouts and status of the member shall be provided if such whereabouts and status are investigated under chapter 76 of this title. The Secretary shall periodically, and whenever the member is deployed as part of a contingency operation or in other circumstances specified by the Secretary, require that such designation be reconfirmed, or modified, by the member.

(b) The Secretary concerned shall, upon the request of a member, permit the member to revise the person or persons specified by the member under subsection (a) at any time. Any such revision shall be in writing.


CHAPTER 38—JOINT OFFICER MANAGEMENT

§ 661. Management policies for joint qualified officers

§ 662. Promotion policy objectives for joint officers

§ 663. Joint duty assignments after completion of joint professional military education

§ 664. Length of joint duty assignments

§ 665. Procedures for monitoring careers of joint qualified officers

§ 666. Reserve officers not on the active-duty list

§ 667. Annual report to Congress

§ 668. Definitions

AMENDMENTS
