

## 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.

**§ 1174a. Special separation benefits programs**

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

- (1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and
- (2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 452 and 453(c) of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 476<sup>1</sup> note) for members of the armed forces who are involuntarily separated with in the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

- (A) years of service;
- (B) skill or rating;
- (C) grade or rank; and
- (D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under

this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) APPLICATION REQUIREMENTS.—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

(i) submit a request for separation under the program before the expiration of the member's term of enlistment; or

(ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pursuant to this section shall be considered a request for separation under the program.

(g) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

<sup>1</sup> See References in Text note below.

(h) TERMINATION OF PROGRAM.—(1) Except as provided in paragraph (2), the Secretary concerned may not conduct a program pursuant to this section after December 31, 2001.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added Pub. L. 102-190, div. A, title VI, § 661(a)(1), Dec. 5, 1991, 105 Stat. 1394; amended Pub. L. 102-484, div. A, title X, § 1052(15), div. D, title XLIV, §§ 4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2499, 2706, 2718; Pub. L. 103-35, title II, § 202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103-160, div. A, title V, §§ 502, 561(g), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103-337, div. A, title V, § 542(b), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105-261, div. A, title V, § 561(b), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106-398, § 1 [[div. A], title V, § 571(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-134; Pub. L. 112-81, div. A, title VI, § 631(f)(4)(A), Dec. 31, 2011, 125 Stat. 1468; Pub. L. 112-239, div. A, title X, § 1076(a)(9), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 117-263, div. A, title VI, § 626(c)(2), Dec. 23, 2022, 136 Stat. 2628.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 503(c) of the National Defense Authorization Act for Fiscal Year 1991, referred to in subsec. (b)(2)(B), is section 503(c) of Pub. L. 101-510, div. A, title V, Nov. 5, 1990, 104 Stat. 1558, which was formerly set out as a note under section 476 of Title 37, Pay and Allowances of the Uniformed Services, prior to transfer and is now set out as a note under section 453 of Title 37.

##### AMENDMENTS

2022—Subsec. (b)(2)(B). Pub. L. 117-263 substituted “sections 452 and 453(c)” for “sections 474 and 476”.

2013—Subsec. (b)(2)(B). Pub. L. 112-239, § 1076(a)(9), made technical amendment to directory language of Pub. L. 112-81, § 631(f)(4)(A). See 2011 Amendment note below.

2011—Subsec. (b)(2)(B). Pub. L. 112-81, § 631(f)(4)(A), as amended by Pub. L. 112-239, § 1076(a)(9), substituted “474” for “404” and substituted “476” for “406” in two places.

2000—Subsec. (h)(1). Pub. L. 106-398 substituted “December 31, 2001” for “September 30, 2001”.

1998—Subsec. (h)(1). Pub. L. 105-261 substituted “September 30, 2001” for “September 30, 1999”.

1994—Subsec. (a). Pub. L. 103-337, § 542(b)(1), substituted “concerned” for “of each military department”.

Subsec. (d). Pub. L. 103-337, § 542(b)(2), substituted “concerned” for “of a military department”.

Subsec. (e)(3). Pub. L. 103-337, § 542(b)(3), struck out “of the military department” after “Secretary”.

Subsec. (h). Pub. L. 103-337, § 542(b)(4), substituted “concerned” for “of a military department”.

1993—Subsec. (c)(2). Pub. L. 103-160, § 502, struck out “before December 5, 1991” after “6 years”.

Subsec. (c)(3). Pub. L. 103-35, § 202(a)(17)(A), made technical amendment to directory language of Pub. L. 102-484, § 4422(a)(3). See 1992 Amendment note below.

Subsec. (c)(4). Pub. L. 103-35, § 202(a)(17)(B), made technical amendment to directory language of Pub. L. 102-484, § 4422(a)(4). See 1992 Amendment note below.

Subsec. (h)(1). Pub. L. 103-160, § 561(g), substituted “September 30, 1999” for “September 30, 1995”.

1992—Subsec. (b)(1). Pub. L. 102-484, § 4422(a)(1), inserted “or full-time National Guard duty” after “active duty”.

Subsec. (b)(2)(B). Pub. L. 102-484, § 4405(a), inserted “, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year

1991 (104 Stat. 1558; 37 U.S.C. 406 note)” after “chapter 58 of this title”.

Subsec. (c)(2). Pub. L. 102-484, § 1052(15), 4422(a)(2), substituted “December 5, 1991” for “the date of the enactment of this section” and inserted “or full-time National Guard duty or any combination of active duty and full-time National Guard duty” after “active duty”.

Subsec. (c)(3). Pub. L. 102-484, § 4422(a)(3), as amended by Pub. L. 103-35, § 202(a)(17)(A), inserted “or full-time National Guard duty or any combination of active duty and full-time National Guard duty” after “active duty”.

Subsec. (c)(4). Pub. L. 102-484, § 4422(a)(4), as amended by Pub. L. 103-35, § 202(a)(17)(B), inserted “and” after semicolon at end and “or full-time National Guard duty or any combination of active duty and full-time National Guard duty” after “active duty” the first place it appeared.

Subsec. (c)(5), (6). Pub. L. 102-484, § 4424(a)(5), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: “if a Reserve, is on an active duty list; and”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(9) is effective Dec. 31, 2011, and as if included in Pub. L. 112-81 as enacted.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103-337, set out as a note under section 1141 of this title.

##### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-35 applicable as if included in the enactment of Pub. L. 102-484, see section 202(b) of Pub. L. 103-35, set out as a note under section 155 of this title.

##### EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-484, div. A, title XLIV, § 4405(c), Oct. 23, 1992, 106 Stat. 2706, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1175 of this title] shall apply as if included in sections 1174a and 1175 of title 10, United States Code, as enacted on December 5, 1991, but any benefits or services payable by reason of the applicability of the provisions of those amendments during the period beginning on December 5, 1991, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.”

#### REMEDY FOR INEFFECTIVE COUNSELING OF OFFICERS DISCHARGED FOLLOWING SELECTION BY EARLY DISCHARGE BOARDS

Pub. L. 103-160, div. A, title V, § 507, Nov. 30, 1993, 107 Stat. 1646, as amended by Pub. L. 103-337, div. A, title X, § 1070(b)(1), Oct. 5, 1994, 108 Stat. 2856, provided that:

“(a) PROCEDURE FOR REVIEW.—(1) The Secretary of each military department shall establish a procedure for the review of the individual circumstances of an officer described in paragraph (2) who is discharged, or who the Secretary concerned approves for discharge, following the report of a selection board convened by the Secretary to select officers for separation. The procedure established by the Secretary of a military department under this section shall provide that each review under that procedure be carried out by the Board for the Correction of Military Records of that military department.

“(2) This section applies in the case of any officer (including a warrant officer) who, having been offered the opportunity to be discharged or otherwise separated

from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

“(A) elected not to accept such discharge or separation; and

“(B) submits an application under subsection (b) during the two-year period beginning on the later of the date of the enactment of this Act [Nov. 30, 1993] and the date of such discharge or separation.

“(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary concerned by application from the officer or former officer under regulations prescribed by the Secretary.

“(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

“(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

“(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

“(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

“(2) The Voluntary Separation Incentive program under section 1175 of such title.

“(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2702; 10 U.S.C. 1293 note).

“(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.”

#### SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

Pub. L. 103-335, title VIII, §8106A, Sept. 30, 1994, 108 Stat. 2645, as amended by Pub. L. 104-6, title I, §105(a), Apr. 10, 1995, 109 Stat. 79, which provided that members who separated after Sept. 30, 1994, from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program under section 1174a of this title or a Voluntary Separation Incentive program under section 1175 of this title would have their separation payments reduced by the amount of certain bonus payments and eliminated if they are rehired within 180 days by the Department of Defense in a civilian position and that civilian Department of Defense employees would not receive voluntary separation payments if rehired by a Federal agency within 180 days of separating from the Department of Defense, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation act:

Pub. L. 103-139, title VIII, §8127, Nov. 11, 1993, 107 Stat. 1469.

#### COMMENCEMENT OF PROGRAM

Pub. L. 102-190, div. A, title VI, §661(b), Dec. 5, 1991, 105 Stat. 1395, provided that: ‘The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991].’

#### REPORT ON PROGRAMS

Pub. L. 102-190, div. A, title VI, §663, Dec. 5, 1991, 105 Stat. 1399, directed Secretary, not later than 180 days after Dec. 5, 1991, to submit to Congress a report containing the Secretary's assessment of effectiveness of

programs established under sections 1174a and 1175 of this title.

#### § 1175. Voluntary separation incentive

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Homeland Security determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursu-