

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.

§ 636. Retirement for years of service: regular and Space Force officers in grades above brigadier general; regular Navy officers in grades above rear admiral (lower half)

(a) MAJOR GENERALS AND REAR ADMIRALS SERVING IN GRADE.—(1) Except as provided in subsection (b) or (c) and under section 637(b) or 637a of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(2) Except as provided in subsection (b) or (c) and under section 637(b) or 637a of this title, each officer of the Space Force who holds the grade of major general shall, if not earlier retired, be retired as specified in paragraph (1).

(b) LIEUTENANT GENERALS AND VICE ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of lieutenant general or vice admiral, the number of years of active commissioned service applicable to the officer is 38 years.

(c) GENERALS AND ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of general or admiral, the number of years of active commissioned service applicable to the officer is 40 years.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 98-525, title XIV, §1405(14), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 105-85, div. A, title V, §506(a), (b), Nov. 18, 1997, 111 Stat. 1726; Pub. L. 114-328, div. A, title V, §505(b)(4), Dec. 23, 2016, 130 Stat. 2108; Pub. L. 116-283, div. A, title IX, §924(b)(4)(G), Jan. 1, 2021, 134 Stat. 3822; Pub. L. 118-31, div. A, title XVII, §1722(b)(6)(D), (E)(iv), Dec. 22, 2023, 137 Stat. 669, 670.)

Editorial Notes

AMENDMENTS

2023—Pub. L. 118-31, §1722(b)(6)(E)(iv), substituted “and Space Force officers in grades above brigadier general; regular Navy officers in grades above” for “officers in grades above brigadier general and” in section catchline.

Subsec. (a). Pub. L. 118-31, §1722(b)(6)(D), designated existing provisions as par. (1), substituted “or Regular Marine Corps” for “Regular Marine Corps, or Regular Space Force”, and added par. (2).

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

2016—Subsec. (a). Pub. L. 114-328 inserted “or 637a” after “637(b)”.

1997—Pub. L. 105-85, §506(b), substituted “regular officers in grades above brigadier general and rear admiral (lower half)” for “regular major generals and rear admirals” in section catchline.

Pub. L. 105-85, §506(a), designated existing provisions as subsec. (a), inserted heading, substituted “Except as provided in subsection (b) or (c) and” for “Except as provided”, and added subsecs. (b) and (c).

1984—Pub. L. 98-525 substituted “35” for “thirty-five”.

Statutory Notes and Related Subsidiaries

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.

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec. 637. 637a. 638. 638a. 638b. 639. 640.	Selection of regular officers for continuation on active duty. Continuation on active duty: officers in certain military specialties and career tracks. Selective early retirement. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges. Voluntary retirement incentive. Continuation on active duty to complete disciplinary action. Deferment of retirement or separation for medical reasons.
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Editorial Notes

AMENDMENTS

2016—Pub. L. 114-328, div. A, title V, §505(a)(2), Dec. 23, 2016, 130 Stat. 2108, added item 637a.

2011—Pub. L. 112-81, div. A, title V, §504(a)(2), 125 Stat. 1390, added item 638b.

1990—Pub. L. 101-510, div. A, title V, §521(a)(2), Nov. 5, 1990, 104 Stat. 1561, added item 638a.

§ 637. Selection of regular officers for continuation on active duty

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, Marine Corps, or Space Force, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but de-

clines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 7311, 8323, or 9311 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633 or 634 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), 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. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, except as provided under section 1251 or 1253 of this title.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section 611(b) of this title is subject to the approval of the Secretary of the military department concerned. 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.

(d) For purposes of this section, a period of continuation on active duty under this section expires or is completed on the earlier of (1) the date originally established for the termination of such period, or (2) the date established for the termination of such period by any shortening of such period under section 638a of this title.

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

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97-22, §4(e), July 10, 1981, 95 Stat. 127; Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title XIV, §1405(15), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101-510, div. A, title V, §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.