

Stat. 3355; Pub. L. 114-92, div. A, title V, § 503, Nov. 25, 2015, 129 Stat. 807; Pub. L. 114-328, div. A, title V, §§ 506, 508(b), Dec. 23, 2016, 130 Stat. 2108, 2109; Pub. L. 115-91, div. A, title V, § 503, Dec. 12, 2017, 131 Stat. 1373; Pub. L. 115-232, div. A, title VIII, § 809(a), Aug. 13, 2018, 132 Stat. 1840.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsecs. (b)(3)(C) and (e)(1), is section 4403 of Pub. L. 102-484, which is set out as a note under section 1293 of this title.

#### AMENDMENTS

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

2017—Subsec. (c)(1). Pub. L. 115-91, § 503(1), added par. (1) and struck out former par. (1) which read as follows: “In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection 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.”

Subsec. (d)(2). Pub. L. 115-91, § 503(2), added par. (2) and struck out former par. (2) which read as follows: “The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(3). That number may not be more than 30 percent of the number of officers considered.”

2016—Subsec. (a)(2). Pub. L. 114-328, § 508(b), substituted “December 31, 2025” for “December 31, 2018”.

Subsec. (b)(4). Pub. L. 114-328, § 506(1), added par. (4). Subsecs. (e), (f). Pub. L. 114-328, § 506(2), (3), added subsec. (e) and redesignated former subsec. (e) as (f).

2015—Subsec. (d)(2). Pub. L. 114-92 substituted “officers considered.” for “officers considered—

“(A) in each grade in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade; or

“(B) in each grade, year group, or specialty (or combination thereof) in each competitive category, except that through December 31, 2018, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade.”

2014—Subsec. (d)(3) to (5). Pub. L. 113-291 redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: “The total number of officers described in subsection (b)(3) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.”

2013—Subsec. (a). Pub. L. 112-239, § 502(1), designated existing provisions as par. (1), struck out “, during the period beginning on October 1, 1990, and ending on December 31, 2001, and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “military department”, and added par. (2).

Subsec. (b)(2)(A). Pub. L. 113-66, § 503(a)(1), substituted “have failed of selection for promotion at least

one time and whose names are not on a list of officers recommended for promotion” for “would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times)”.

Subsec. (b)(2)(B). Pub. L. 113-66, § 503(a)(2), substituted “have served on active duty in that grade for at least two years and whose names are not on a list of officers recommended for promotion” for “would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years)”.

Subsec. (b)(3), (4). Pub. L. 112-239, § 502(2), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “Suspending section 638(c) of this title.”

Subsec. (c)(4). Pub. L. 112-239, § 502(3), added par. (4).

Subsec. (d). Pub. L. 112-239, § 502(4), substituted “subsection (b)(3)” for “subsection (b)(4)” wherever appearing and “except that through December 31, 2018,” for “except that during the period beginning on October 1, 2006, and ending on December 31, 2012,” in subpars. (A) and (B) of par. (2).

2006—Subsec. (a). Pub. L. 109-364, § 623(b)(1), inserted “and for the purpose of subsection (b)(4) during the period beginning on October 1, 2006, and ending on December 31, 2012,” after “December 31, 2001.”

Subsec. (d)(2)(A). Pub. L. 109-364, § 623(b)(2)(A), inserted “, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade” before “; or” at end.

Subsec. (d)(2)(B). Pub. L. 109-364, § 623(b)(2)(B), inserted “, except that during the period beginning on October 1, 2006, and ending on December 31, 2012, such number may be more than 30 percent of the officers considered in each competitive category, but may not be more than 30 percent of the number of officers considered in each grade” before period at end.

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

1998—Subsec. (a). Pub. L. 105-261 substituted “during the period beginning on October 1, 1990, and ending on September 30, 2001” for “during the nine-year period beginning on October 1, 1990”.

1993—Subsec. (a). Pub. L. 103-160 substituted “nine-year period” for “five-year period”.

1992—Subsec. (b)(4)(C). Pub. L. 102-484, § 4403(g)(2), inserted “(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)” after “any provision of law”.

Subsec. (c)(3). Pub. L. 102-484, § 503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102-190, § 503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.”

Subsec. (c). Pub. L. 102-190, § 503(b)(2), designated existing provisions as par. (1) and added par. (2).

### 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.

### § 638b. Voluntary retirement incentive

(a) INCENTIVE FOR VOLUNTARY RETIREMENT FOR CERTAIN OFFICERS.—The Secretary of Defense

may authorize the Secretary of a military department to provide a voluntary retirement incentive payment in accordance with this section to an officer of the armed forces under that Secretary's jurisdiction who is specified in subsection (c) as being eligible for such a payment.

(b) **LIMITATIONS.**—(1) Any authority provided the Secretary of a military department under this section shall expire as specified by the Secretary of Defense, but not later than December 31, 2018.

(2) The total number of officers who may be provided a voluntary retirement incentive payment under this section may not exceed 675 officers.

(c) **ELIGIBLE OFFICERS.**—(1) Except as provided in paragraph (2), an officer of the armed forces is eligible for a voluntary retirement incentive payment under this section if the officer—

(A) has served on active duty for more than 20 years, but not more than 29 years, on the approved date of retirement;

(B) meets the minimum length of commissioned service requirement for voluntary retirement as a commissioned officer in accordance with section 7311, 8323, or 9311 of this title, as applicable to that officer;

(C) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement years of active service for the member's grade as specified in section 633 or 634 of this title;

(D) on the approved date of retirement, has 12 months or more remaining on active-duty service before reaching the maximum retirement age under any other provision of law; and

(E) meets any additional requirements for such eligibility as is specified by the Secretary concerned, including any requirement relating to years of service, skill rating, military specialty or competitive category, grade, any remaining period of obligated service, or any combination thereof.

(2) The following officers are not eligible for a voluntary retirement incentive payment under this section:

(A) An officer being evaluated for disability under chapter 61 of this title.

(B) An officer projected to be retired under section 1201 or 1204 of this title.

(C) An officer projected to be discharged with disability severance pay under section 1212 of this title.

(D) A member transferred to the temporary disability retired list under section 1202 or 1205 of this title.

(E) An officer subject to pending disciplinary action or subject to administrative separation or mandatory discharge under any other provision of law or regulation.

(d) **AMOUNT OF PAYMENT.**—The amount of the voluntary retirement incentive payment paid an officer under this section shall be an amount determined by the Secretary concerned, but not to exceed an amount equal to 12 times the amount of the officer's monthly basic pay at the time of the officer's retirement. The amount may be paid in a lump sum at the time of retirement.

(e) **REPAYMENT FOR MEMBERS WHO RETURN TO ACTIVE DUTY.**—(1) Except as provided in paragraph (2), a member of the armed forces who, after having received all or part of a voluntary retirement incentive under this section, returns to active duty shall have deducted from each payment of basic pay, in such schedule of monthly installments as the Secretary concerned shall specify, until the total amount deducted from such basic pay equals the total amount of voluntary retirement incentive received.

(2) Members who are involuntarily recalled to active duty or full-time National Guard duty under any provision of law shall not be subject to this subsection.

(3) The Secretary of Defense may waive, in whole or in part, repayment required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interest of the United States. The authority in this paragraph may be delegated only to the Under Secretary of Defense for Personnel and Readiness and the Principal Deputy Under Secretary of Defense of Personnel and Readiness.

(Added Pub. L. 112-81, div. A, title V, §504(a)(1), Dec. 31, 2011, 125 Stat. 1389; amended Pub. L. 115-232, div. A, title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1840.)

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (c)(1)(B). Pub. L. 115-232 substituted "section 7311, 8323, or 9311" for "section 3911, 6323, or 8911".

#### 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.

#### § 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2866.)

#### 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.

#### § 640. Deferment of retirement or separation for medical reasons

(a) If the Secretary of the military department concerned determines that the evaluation of the