

(b) If the Senate, where required, does not consent to the appointment of an officer whose name is on a list of selectees established under section 3740 of this title, that officer's name shall be removed from the list.

(c) An officer whose name is removed from a list of selectees under subsection (a) or (b) continues to be eligible for consideration for promotion. If selected for promotion by the next selection board and promoted, that officer shall be assigned the date of rank and precedence that would have been assigned if the officer's name had not been previously removed. However, if the officer is not selected by the next selection board, or if the officer's name is again removed from the list of selectees, the officer shall be considered for all purposes as having twice failed of selection for promotion.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1013, §738; renumbered §3749 and amended Pub. L. 115-282, title I, §§118(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4233, 4240.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 788 of this title prior to the complete revision of former chapter 21 of this title by Pub. L. 96-322.

AMENDMENTS

2018—Pub. L. 115-282, §118(b), renumbered section 738 of this title as this section.

Subsecs. (a), (b). Pub. L. 115-282, §123(b)(2), substituted "section 3740" for "section 729".

Executive Documents

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsec. (a) of this section, see section 2(d) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

§ 3750. Failure of selection for promotion

(a) A Reserve officer, other than one serving in the grade of captain, who is, or is senior to, the junior officer in the promotion zone established for the officer's grade, fails of selection if not selected for promotion by the selection board that considered the officer, or if having been selected for promotion by the board, the officer's name is thereafter removed from the report of the board by the President.

(b) A Reserve officer is not considered to have failed of selection if the officer was not considered by a selection board because of administrative error. If that officer is selected by the next appropriate selection board after the error is discovered, and is promoted, the same date of rank and precedence shall be assigned that would have been assigned if the officer had been recommended for promotion by the selection board that originally would have considered the officer but for the error.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1013, §739; renumbered §3750, Pub. L. 115-282, title I, §118(b), Dec. 4, 2018, 132 Stat. 4233.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 796 of this title prior to the complete revision of former chapter 21 of this title by Pub. L. 96-322.

AMENDMENTS

2018—Pub. L. 115-282 renumbered section 739 of this title as this section.

§ 3751. Failure of selection and removal from an active status

(a) The Secretary—

(1) may remove from an active status a Reserve officer who has twice failed of selection to the next higher grade; and

(2) shall remove from an active status a Reserve officer serving in the grade of captain who has completed thirty years of total commissioned service and whose name is not carried on an approved list of selectees for promotion to the grade of rear admiral (lower half).

(b) A Reserve officer who has twice failed of selection to the next higher grade and who is not removed from an active status under subsection (a)(1) of this section shall be retained for the period prescribed by the Secretary.

(c) Subject to section 12646 of title 10, a Reserve officer who is removed from an active status under subsection (a) of this section shall be given an opportunity to transfer to the Retired Reserve, if qualified, but unless so transferred shall, in the discretion of the Secretary, be transferred to the inactive status list or discharged as follows:

(1) if removed from an active status under subsection (a)(1) of this section, on June 30 next following the approval date of the board report by virtue of which the officer's second failure of selection occurs; or

(2) if removed from an active status under subsection (a)(2) of this section, on June 30 next following the date on which the officer completes thirty years of total commissioned service as computed under this section.

(d) For the purpose of this section, the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment to the Reserve was accepted. A Reserve officer initially appointed in a grade above ensign is considered to have the actual total commissioned service performed in a grade above commissioned warrant officer or the same total commissioned service as an officer of the Regular Coast Guard who has served continuously from an original appointment as ensign, who has not lost numbers or precedence, and who is, or was, junior to the Reserve officer, whichever is greater.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1013, §740; amended Pub. L. 97-417, §2(15), Jan. 4, 1983, 96 Stat. 2086; Pub. L. 99-145, title V, §514(c)(1), Nov. 8, 1985, 99 Stat. 629; Pub. L. 103-337, div. A, title XVI, §1677(b)(5), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 112-213, title II, §217(14),

Dec. 20, 2012, 126 Stat. 1558; renumbered §3751, Pub. L. 115-282, title I, §118(b), Dec. 4, 2018, 132 Stat. 4233.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 787 of this title prior to the complete revision of former chapter 21 of this title by Pub. L. 96-322.

AMENDMENTS

2018—Pub. L. 115-282 renumbered section 740 of this title as this section.

2012—Subsec. (d). Pub. L. 112-213 substituted “that appointment to the Reserve” for “that appointment”.

1994—Subsec. (c). Pub. L. 103-337 substituted “section 12646 of title 10” for “section 1006 of title 10”.

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

1983—Subsec. (a)(2). Pub. L. 97-417 substituted “commodore” for “rear admiral”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

§ 3752. Retention boards; removal from an active status to provide a flow of promotion

(a) Notwithstanding any other provision of this title, whenever the Secretary determines that it is necessary to reduce the number of Reserve officers in an active status in any grade to provide a steady flow of promotion, or that there is an excessive number of Reserve officers in an active status in any grade, the Secretary may appoint and convene a retention board to consider all of the Reserve officers in that grade in an active status who have 18 years or more of service for retirement, except those officers who—

- (1) are on extended active duty;
- (2) are on a list of selectees for promotion;
- (3) will complete 30 years total commissioned service by June 30th following the date that the retention board is convened; or
- (4) have reached age 59 by the date on which the retention board is convened.

The retention board shall select and recommend a specified number of the officers under consideration for retention in an active status.

(b) This board shall—

- (1) to the extent practicable, consist of at least 50 per centum Reserve officers;
- (2) consist only of officers who are senior in rank to any officers being considered by that board; and
- (3) to the extent practicable, consist of officers who have not served on the last previous retention board which considered officers of the same grade.

(c) Subject to section 12646 of title 10, a Reserve officer who is not recommended for retention in an active status under this section shall be given an opportunity to transfer to the Retired Reserve, if qualified, but unless so transferred shall, in the discretion of the Secretary,

be transferred to the inactive status list or discharged on June 30 next following the date on which the report of the retention board is approved.

(d) The provisions of section 2117 of this title shall, to the extent that they are not inconsistent with this subchapter, apply to boards convened under this section.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1014, §741; amended Pub. L. 101-225, title II, §203(5), Dec. 12, 1989, 103 Stat. 1911; Pub. L. 103-206, title II, §203, Dec. 20, 1993, 107 Stat. 2420; Pub. L. 103-337, div. A, title XVI, §1677(b)(5), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 104-106, div. A, title XV, §1501(e)(1)(B), Feb. 10, 1996, 110 Stat. 501; renumbered §3752 and amended Pub. L. 115-282, title I, §§118(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4233, 4240.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 787a of this title prior to the complete revision of former chapter 21 of this title by Pub. L. 96-322.

AMENDMENTS

2018—Pub. L. 115-282, §118(b), renumbered section 741 of this title as this section.

Subsec. (d). Pub. L. 115-282, §123(b)(2), substituted “section 2117” for “section 260”.

1996—Subsec. (c). Pub. L. 104-106 substituted “section 12646 of title 10” for “section 1006 of title 10”.

1994—Subsec. (b). Pub. L. 103-337, which directed amendment of subsec. (b) by substituting “section 12646 of title 10” for “section 1006 of title 10”, could not be executed because the words “section 1006 of title 10” did not appear in subsec. (b).

1993—Pub. L. 103-206 in subsec. (a) in first sentence substituted “, except those officers who—” and pars. (1) to (4) for “and are not on active duty and not on an approved list of selectees for promotion to the next higher grade”, realigned margin of second sentence, inserted “(b)” before “This board shall—” in third sentence and realigned margin, and redesignated former subssecs. (b) and (c) as (c) and (d), respectively.

1989—Subsec. (a). Pub. L. 101-225 inserted “who have 18 years or more of service for retirement and are” before “not on active duty”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

§ 3753. Maximum ages for retention in an active status

(a) A Reserve officer, if qualified, shall be transferred to the Retired Reserve on the day the officer becomes 60 years of age unless on active duty. If not qualified for retirement, a Reserve officer shall be discharged effective upon the day the officer becomes 60 years of age unless on active duty.