

and struck out “: *Provided*, That such regulations shall not authorize annual leave to be accumulated in excess of sixty days” after “allowances”.

Subsec. (b). Pub. L. 117-328, § 2225(a)(2), added subsec. (b).

Subsecs. (c), (d). Pub. L. 117-328, § 2225(a)(3), redesignated subsec. (d) as (c).

2020—Subsec. (a). Pub. L. 116-136 substituted “Ready Reserve Corps” for “Reserve Corps”.

1979—Subsec. (c). Pub. L. 96-76, repealed subsec. (c) which set forth limitations on granting of annual leave under subsec. (a) of this section.

1962—Subsec. (b). Pub. L. 87-649 repealed subsec. (b) which required forfeiture of all pay and allowances of an officer absent without leave. See section 503 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87-649 repealed last sentence which authorized a lump-sum payment for unused accumulated and accrued annual leave on date of separation, retirement, or release from active duty. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (d). Pub. L. 87-649 repealed subsec. (d) insofar as it was applicable to the last sentence of subsec. (c). See Amendment note above.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-328, div. FF, title II, § 2225(b), Dec. 29, 2022, 136 Stat. 5750, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to accumulated annual leave (as defined in section 219 of the Public Health Service Act (42 U.S.C. 210-1)) that a commissioned officer of the Regular Corps or officer of the Ready Reserve Corps on active duty would, but for the regulations described in such section, lose at the end of fiscal year 2022 or a subsequent fiscal year.”

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective July 1, 1950, see section 3(a) of act Aug. 9, 1950, set out as an Effective Date of 1950 Amendment note under section 210 of this title.

AUTHORIZATION TO ACCUMULATE EXCESS ANNUAL LEAVE

Pub. L. 117-180, div. D, title III, § 302, Sept. 30, 2022, 136 Stat. 2136, provided that: “For purposes of annual leave accumulated in fiscal year 2022, the authority provided in section 2106 of division C of Public Law 116-159 (42 U.S.C. 210-1 note) shall apply to such leave by substituting ‘2022’ for ‘2020’ in subsections (a) and (d)(2).”

Pub. L. 116-159, div. C, title I, § 2106, Oct. 1, 2020, 134 Stat. 729, provided that:

“(a) IN GENERAL.—Notwithstanding section 219 of the Public Health Service Act (42 U.S.C. 210-1), a commissioned officer of the Public Health Service who, except for this section, would lose at the end of the fiscal year 2020 accumulated annual leave in excess of 60 days, may retain such amounts of accumulated annual leave in excess of 60 days.

“(b) USE OF EXCESS LEAVE.—Annual leave retained pursuant to subsection (a) shall be lost unless it is used by the officer no later than September 30, 2023.

“(c) APPLICABILITY.—This section shall not apply to an officer on terminal leave preceding separation, retirement, or release from active duty, as of the effective date specified in subsection (d).

“(d) EFFECTIVE DATE.—This section shall become effective on the earlier of—

“(1) the date of the enactment of this Act [Oct. 1, 2020]; or

“(2) September 30, 2020.”

COMPENSATION FOR PRIOR ACCUMULATED AND ACCRUED LEAVE; LIMITATION; INAPPLICABLE TO OFFICERS ON TERMINAL LEAVE PRIOR TO JULY 1, 1950

Act Aug. 9, 1950, ch. 654, § 3(b), (c), 64 Stat. 426, 427, provided that any officer credited with more than sixty days of accumulated and accrued leave on June 30, 1949, be compensated for so much of such leave as exceeds sixty days, that such compensation be due and payable on July 1, 1950, and that the provisions of this Act not apply to any officer on terminal leave preceding separation, retirement, or release from active duty.

AVAILABILITY OF FUNDS

Act Aug. 9, 1950, ch. 654, § 4, 64 Stat. 427, provided for the availability of funds for payment of compensation for prior accumulated and accrued leave for any officer under section 3 of this Act.

LEAVE REGULATIONS

Act Aug. 9, 1950, ch. 654, § 5, 64 Stat. 427, provided that: “Except insofar as the provisions of this Act [enacting this section, amending section 210 of this title, and enacting provisions set out as notes under this section and section 210 of this title] are inconsistent therewith, leave regulations adopted prior to the enactment of this Act [Aug. 9, 1950], pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.], shall remain in effect until repealed, amended, or superseded.”

Executive Documents

TRANSFER OF FUNCTIONS

Functions of Public Health Service, of Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 210a. Repealed. Pub. L. 87-649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act Feb. 28, 1948, ch. 83, § 5(e), (f), 62 Stat. 41, related to service credit for commissioned officers on active duty Feb. 28, 1948, and to service credit for pay and promotion purposes of certain appointees during period Feb. 28, 1948, to July 1, 1948.

§ 210b. Professional categories

(a) Division of corps; basis of categories

For the purpose of establishing eligibility of officers of the Regular Corps for promotions, the Surgeon General shall by regulation divide the corps into professional categories. Each category shall, as far as practicable, be based upon one of the subjects of examination set forth in section 209(a)(1) of this title or upon a subdivision of such subject, and the categories shall be designed to group officers by fields of training in such manner that officers in any one grade in any one category will be available for similar duty in the discharge of the several functions of the Service.

(b) Assignment of officers

Each officer of the Regular Corps on active duty shall, on the basis of his training and expe-

rience, be assigned by the Surgeon General to one of the categories established by regulations under subsection (a). Except upon amendment of such regulations, no assignment so made shall be changed unless the Surgeon General finds (1) that the original assignment was erroneous, or (2) that the officer is equally well qualified to serve in another category to which he has requested to be transferred, and that such transfer is in the interests of the Service.

(c) Maximum number of officers in each category

Within the limits fixed by the Secretary in regulations under section 207(d) of this title for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W-1) grade to the director grade, inclusive.

(d) Vacancies in grade for purposes of promotion

The excess of the number so fixed for any grade in any category over the number of officers of the Regular Corps on active duty in such grade in such category (including in the case of the director grade, officers holding such grade in accordance with section 207(c) of this title) shall for the purpose of promotions constitute vacancies in such grade in such category. For purposes of this subsection, an officer who has been temporarily promoted or who is temporarily holding the grade of director in accordance with section 207(c) of this title shall be deemed to hold the grade to which so promoted or which he is temporarily holding; but while he holds such promotion or grade, and while any officer is temporarily assigned to a position pursuant to section 206(c) of this title, the number fixed under subsection (c) of this section for the grade of his permanent rank shall be reduced by one.

(e) Absence of vacancy in grade as affecting promotion

The absence of a vacancy in a grade in a category shall not prevent an appointment to such grade pursuant to section 209 of this title, a permanent length of service promotion, or the recall of a retired officer to active duty; but the making of such an appointment, promotion, or recall shall be deemed to fill a vacancy if one exists.

(f) Vacancy in grade as affecting maximum number for each category

Whenever a vacancy exists in any grade in a category the Surgeon General may increase by one the number fixed by him under subsection (c) for the next lower grade in the same category, without regard to the numbers fixed in regulations under section 207(d) of this title; and in that event the vacancy in the higher grade shall not be filled except by a permanent promotion, and upon the making of such promotion the number for the next lower grade shall be reduced by one.

(July 1, 1944, ch. 373, title II, § 209, as added Feb. 28, 1948, ch. 83, § 5(i), 62 Stat. 41; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96-76, title III, § 306, Sept. 29, 1979, 93 Stat. 585.)

Editorial Notes

PRIOR PROVISIONS

A prior section 209 of act July 1, 1944, was renumbered section 208 and is classified to section 210 of this title.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-76 substituted “warrant officer (W-1)” for “assistant”.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-76 effective Oct. 1, 1979, see section 314 of Pub. L. 96-76, set out as a note under section 206 of this title.

Executive Documents

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Office of Surgeon General reestablished within the Office of the Assistant Secretary for Health, see Notice of Department of Health and Human Services, Office of the Assistant Secretary for Health, Mar. 30, 1987, 52 F.R. 11754.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953.

§ 211. Promotion of commissioned officers

(a) Permanent or temporary promotions; examination

Promotions of officers of the Regular Corps to any grade up to and including the director grade shall be either permanent promotions based on length of service, other permanent promotions to fill vacancies, or temporary promotions. Permanent promotions shall be made by the President, and temporary promotions shall be made by the President. Each permanent promotion shall be to the next higher grade, and shall be made only after examination given in accordance with regulations of the President.

(b) Promotion to certain grades only to fill vacancies; regulations; “restricted grade” defined

The President may by regulation provide that in a specified professional category permanent promotions to the senior grade, or to both the full grade and the senior grade, shall be made only if there are vacancies in such grade. A grade in any category with respect to which such regulations have been issued is referred to in this section as a “restricted grade”.

(c) Examinations

Examinations to determine qualification for permanent promotions may be either non-