§ 12312. Active duty agreements: release from duty

(a) Each agreement made under section 12311 (a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is

(A) dismissed or discharged under the sentence of a court-martial,

(B) released because of an unexplained absence without leave for at least three months,

(C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or

(D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a reserve officer who is not serving under such agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 12311 (a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month’s basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

(1) released for a reason described in subsection (a)(2)(A)–(C);

(2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;

(3) eligible for retired pay, separation pay, or severance pay under another provision of law;

(4) placed on a temporary disability retired list; or

(5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.


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<tr>
<th>Revised section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>680(a)</td>
<td></td>
<td>50:963(a) (last sentence).</td>
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<td>Source (U.S. Code)</td>
<td>Source (Statutes at Large)</td>
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<td>50:963(b).</td>
<td>July 9, 1952, ch. 608, § 235(a) (last sentence), (b), 66 Stat. 491.</td>
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In subsections (a) and (b), the words “without his consent” are substituted for the word “involuntary”.

In subsection (a)(1), the word “because” is substituted for the words “by reason”. The words “actual personnel strength” are substituted for the words “numerical strength of the military personnel”.

In subsection (a)(2), the words “for any other reason” are substituted for the words “for reasons other than that prescribed in paragraph (1)”. The words “dismissed or discharged” are inserted for clarity. The words “at least” are substituted for the word “duration”. The words “is convicted and sentenced * * * and the sentence has become final” are substituted for the words “final conviction and sentence”. The words “from active duty” are omitted as surplusage.

In subsection (b), the words “before the end of” are substituted for the words “prior to the expiration of the period of service under”. The words “computed by multiplying * * * and fractions of a year of his unexpired period of service under the agreement by the sum of one month’s * * * pay, and allowances” are substituted for the words “equal to one month’s pay and allowances multiplied by * * * (including any pro rata part thereof) remaining as the unexpired period of his agreement for active duty”. The words “basic * * * special pay * * * to which he is entitled on the day of his release” are substituted for 50:963(b) (2d sentence). The third sentence is substituted for 50:963(b) (last sentence). The last sentence is substituted for 50:963(b) (words within 1st parentheses).

In subsection (b)(2), the words “because of” are substituted for the words “when such release is due to”.

In subsection (b)(5), the words “to accept” are substituted for the words “for the purpose of accepting”. The words “of an armed force” are inserted for clarity.

**Amendments**

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 680 of this title as this section.
Subsecs. (a), (b). Pub. L. 103–337, § 1675(c)(8), substituted “12311(a)” for “679(a)”.

Subsec. (b)(3). Pub. L. 98–525, § 533(b), inserted “, separation pay,” after “retired pay”.


**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 this title.