

TITLE 32 — NATIONAL GUARD

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Contents

Chapter 1—Organization	3
Section 101. Definitions	3
Section 102. General policy.....	4
Section 103. Branches and organizations	4
Section 104. Units: location; organization; command.....	5
Section 105. Inspection.....	5
Section 106. Annual appropriations.....	6
Section 107. Availability of appropriations	6
Section 108. Forfeiture of Federal benefits.....	6
Section 109. Maintenance of other troops	6
Section 110. Regulations	7
Section 111. Suspension of certain provisions of this title	7
Section 112. Drug interdiction and counter-drug activities	7
Section 113. Federal financial assistance for support of additional duties assigned.....	10
Section 114. Funeral honors functions at funerals for veterans	10
Section 115. Funeral honors duty performed as a Federal function.....	10
Chapter 3—Personnel	12
Section 301. Federal recognition of enlisted members	12
Section 302. Enlistments, reenlistments, and extensions	12
Section 303. Active and inactive enlistments and transfers	13
Section 304. Enlistment oath	13
Section 305. Federal recognition of commissioned officers: persons eligible.....	13
Section 307. Federal recognition of officers: examination; certificate of eligibility	14
Section 308. Federal recognition of officers: temporary recognition	14
Section 309. Federal recognition of National Guard officers: officers promoted to fill vacancies.....	15
Section 310. Federal recognition of National Guard officers: automatic recognition	15
Section 312. Appointment oath	15

Section 313. Appointments and enlistments: age limitations	15
Section 314. Adjutants general	16
Section 315. Detail of regular members of Army and Air Force to duty with National Guard	16
Section 316. Detail of members of Army National Guard for rifle instruction of civilians.....	16
Section 317. Command during joint exercises with Federal troops.....	16
[Section 318 to 321. Repealed.].....	17
Section 322. Discharge of enlisted members.....	17
Section 323. Withdrawal of Federal recognition	17
Section 324. Discharge of officers; termination of appointment	17
Section 325. Relief from National Guard duty when ordered to active duty.....	18
Section 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction,	18
Section 327. Courts-martial of National Guard not in Federal service: convening authority	18
[Section 328 to 333. Repealed.].....	19
[Section 334. Repealed.].....	19
[Section 335. Repealed.].....	19
Chapter 5—Training	20
Section 501. Training generally.....	20
Section 502. Required drills and field exercises	20
Section 503. Participation in field exercises	21
Section 504. National Guard schools and small arms competitions	21
Section 505. Army and Air Force schools and field exercises.....	22
Section 506. Assignment and detail of members of Regular Army.....	22
Section 507. Instruction in firing; supply of ammunition.....	22
Section 508. Assistance for certain youth and charitable organizations	22
Section 509. National Guard Challenge Program of opportunities for civilian youth	23
Chapter 7—Service, Supply, & Procurement	27
Section 701. Uniforms, arms, and equipment to be same as Army or Air Force.....	27
Section 702. Issue of supplies.....	27
Section 703. Purchases of supplies by States from Army or Air Force	28
Section 704. Accountability: relief from upon order to active duty.....	28
Section 705. Purchase of uniforms and equipment by officers of National Guard.....	28
Section 706. Return of arms and equipment upon relief from Federal service.....	28
Section 707. Use of public buildings for offices by instructors	28
Section 708. Property and fiscal officers	29
Section 709. Technicians: employment, use, status	29
Section 710. Accountability for property issued to the National Guard	30
Section 711. Disposition of obsolete or condemned property	31
Section 712. Disposition of proceeds of condemned stores issued to National Guard	31
Section 713. Official mail: free transmission.....	32
Section 714. Final settlement of accounts: deceased members.....	32
Section 715. Property loss; personal injury or death: activities under certain sections of this title	32
Section 716. Claims for overpayment of pay and allowances, and travel and transportation.....	33

Chapter 1: Organization

Section 101. Definitions

In addition to the definitions in sections 1–5 of title 1, the following definitions apply in this title:

- (1) “Territory” means any Territory organized after this title is enacted, so long as it remains a Territory. However, for purposes of this title and other laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, “Territory” includes Guam and the Virgin Islands.
- (2) “Armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.
- (3) “National Guard” means the Army National Guard and the Air National Guard.
- (4) “Army National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—
 - (A) is a land force;
 - (B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;
 - (C) is organized, armed, and equipped wholly or partly at Federal expense; and
 - (D) is federally recognized.
- (5) “Army National Guard of the United States” means the reserve component of the Army all of whose members are members of the Army National Guard.
- (6) “Air National Guard” means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that—
 - (A) is an air force;

- (B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution;
- (C) is organized, armed, and equipped wholly or partly at Federal expense; and
- (D) is federally recognized.
- (7) “Air National Guard of the United States” means the reserve component of the Air Force all of whose members are members of the Air National Guard.
- (8) “Officer” means commissioned or warrant officer.
- (9) “Enlisted member” means a person enlisted in, or inducted, called, or conscripted into, an armed force in an enlisted grade.
- (10) “Grade” means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.
- (11) “Rank” means the order of precedence among members of the armed forces.
- (12) “Active duty” means full-time duty in the active military service of the United States. It includes such Federal duty as full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. It does not include full-time National Guard duty.
- (13) “Supplies” includes material, equipment, and stores of all kinds.
- (14) “Shall” is used in an imperative sense.
- (15) “May” is used in a permissive sense. The words “no person may *” mean that no person is required, authorized, or permitted to do the act * * prescribed.
- (16) “Includes” means “includes but is not limited to”.
- (17) “Pay” includes basic pay, special pay, incentive pay, retired pay, and equivalent pay, but does not include allowances.
- (18) “Spouse” means husband or wife, as the case may be.
- (19) “Full-time National Guard duty” means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member’s status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of this title for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

Section 102. General policy

In accordance with the traditional military policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with such units of other reserve components as are necessary for a balanced force, shall be ordered to active Federal duty and retained as long as so needed.

Section 103. Branches and organizations

The Army National Guard of each State and Territory, Puerto Rico, and the District of Columbia includes such members of the staff corps corresponding to the staff corps of the Army as the Secretary of the Army may authorize.

Section 104. Units: location; organization; command

- (a) Each State or Territory and Puerto Rico may fix the location of the units and headquarters of its National Guard.
- (b) Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.
- (c) To secure a force the units of which when combined will form complete higher tactical units, the President may designate the units of the National Guard, by branch of the Army or organization of the Air Force, to be maintained in each State and Territory, Puerto Rico, and the District of Columbia. However, no change in the branch, organization, or allotment of a unit located entirely within a State may be made without the approval of its governor.
- (d) To maintain appropriate organization and to assist in training and instruction, the President may assign the National Guard to divisions, wings, and other tactical units, and may detail commissioned officers of the National Guard or of the Regular Army or the Regular Air Force, as the case may be, to command those units. However, the commanding officer of a unit organized wholly within a State or Territory, Puerto Rico, or the District of Columbia may not be displaced under this subsection.
- (e) To insure prompt mobilization of the National Guard in time of war or other emergency, the President may, in time of peace, detail a commissioned officer of the Regular Army to perform the duties of chief of staff for each fully organized division of the Army National Guard, and a commissioned officer of the Regular Air Force to perform the duties of the corresponding position for each fully organized wing of the Air National Guard.
- (f) Unless the President consents—
- (1) an organization of the National Guard whose members have received compensation from the United States as members of the National Guard may not be disbanded; and
 - (2) the actual strength of such an organization in commissioned officers or enlisted members may not be reduced below the minimum strength prescribed by the President.

Section 105. Inspection

- (a) Under regulations prescribed by him, the Secretary of the Army shall have an inspection made by inspectors general, or, if necessary, by any other commissioned officers of the Regular Army detailed for that purpose, to determine whether—
- (1) the amount and condition of property held by the Army National Guard are satisfactory;
 - (2) the Army National Guard is organized as provided in this title;
 - (3) the members of the Army National Guard meet prescribed physical and other qualifications;
 - (4) the Army National Guard and its organization are properly uniformed, armed, and equipped and are being trained and instructed for active duty in the field, or for coast defense;
 - (5) Army National Guard records are being kept in accordance with this title;
 - (6) the accounts and records of each property and fiscal officer are properly maintained; and
 - (7) the units of the Army National Guard meet requirements for deployment.
- The Secretary of the Air Force has a similar duty with respect to the Air National Guard.
- (b) The reports of inspections under subsection (a) are the basis for determining whether the National Guard is entitled to the issue of military property as authorized under this title and to retain that property; and for determining which organizations and persons constitute units and members of the National Guard; and for determining which units of the National Guard meet deployability standards.

Section 106. Annual appropriations

Sums will be appropriated annually, out of any money in the Treasury not otherwise appropriated, for the support of the Army National Guard and the Air National Guard, including the issue of arms, ordnance stores, quartermaster stores, camp equipage, and other military supplies, and for the payment of other expenses authorized by law.

Section 107. Availability of appropriations

(a) Under such regulations as the Secretary concerned may prescribe, appropriations for the National Guard are available for—

- (1) the necessary expenses of members of a regular or reserve component of the Army or the Air Force traveling on duty in connection with the National Guard;
- (2) the necessary expenses of members of the Regular Army or the Regular Air Force on duty in the National Guard Bureau or with the Army Staff or the Air Staff, traveling to and from annual conventions of the Enlisted Association of the National Guard of the United States, the National Guard Association of the United States, or the Adjutants General Association;
- (3) the transportation of supplies furnished to the National Guard as permanent equipment;
- (4) the office rent and necessary office expenses of officers of a regular or reserve component of the Army or the Air Force on duty with the National Guard;
- (5) the expenses of the National Guard Bureau, including clerical services;
- (6) the promotion of rifle practice, including the acquisition, construction, maintenance, and equipment of shooting galleries and suitable target ranges;
- (7) such incidental expenses of authorized encampments, maneuvers, and field instruction as the Secretary considers necessary; and
- (8) other expenses of the National Guard authorized by law.

(b) The expenses of enlisted members of the Regular Army or the Regular Air Force on duty with the National Guard shall be paid from appropriations for the Army National Guard or the Air National Guard, as the case may be, but not from the allotment of a State or Territory, Puerto Rico, or the District of Columbia. Payable expenses include allowances for subsistence and housing under sections 402 and 403 of title 37 and expenses for medicine and medical attendance.

(c) The pay and allowances for the Chief of the National Guard Bureau and officers of the Army National Guard of the United States or the Air National Guard of the United States called to active duty under section 12402 of title 10 shall be paid from appropriations for the pay of the Army National Guard or Air National Guard.

Section 108. Forfeiture of Federal benefits

If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.

Section 109. Maintenance of other troops

(a) In time of peace, a State or Territory, Puerto Rico, the Virgin Islands, or the District of Columbia may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).

(b) Nothing in this title limits the right of a State or Territory, Puerto Rico, the Virgin Islands, or the District of Columbia to use its National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevents it from organizing and maintaining police or constabulary.

(c) In addition to its National Guard, if any, a State or Territory, Puerto Rico, the Virgin Islands, or the District of Columbia may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

(d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.

(e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.

Section 110. Regulations

The President shall prescribe regulations, and issue orders, necessary to organize, discipline, and govern the National Guard.

Section 111. Suspension of certain provisions of this title

In time of war, or of emergency declared by Congress, the President may suspend the operation of any provision of sections 307 (e), 309, 310, and 323 (d) and (e) ⁽¹⁾ of this title with respect to the Army National Guard or the Air National Guard.

Section 112. Drug interdiction and counter-drug activities

(a) Funding Assistance.— The Secretary of Defense may provide funds to the Governor of a State who submits to the Secretary a State drug interdiction and counter-drug activities plan satisfying the requirements of subsection (c). Such funds shall be used for the following:

(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of drug interdiction and counter-drug activities.

(2) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.

(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities. However, the use of such funds for the procurement of equipment may not exceed \$5,000 per item, unless approval for procurement of equipment in excess of that amount is granted in advance by the Secretary of Defense.

(b) Use of Personnel Performing Full-Time National Guard Duty.—

(1) Under regulations prescribed by the Secretary of Defense, personnel of the National Guard of a State may, in accordance with the State drug interdiction and counter-drug activities plan referred to in subsection (c), be ordered to perform full-time National Guard duty under section 502 (f) of this title for the purpose of carrying out drug interdiction and counter-drug activities.

(2)

(A) A member of the National Guard serving on full-time National Guard duty under orders authorized under paragraph (1) shall participate in the training required under section 502 (a) of this title in addition to the duty performed for the purpose authorized under that paragraph. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out drug interdiction and counter-drug activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502 (a)(1) of this title.

(B) Appropriations available for the Department of Defense for drug interdiction and counter-drug activities may be used for paying costs associated with a member's participation in training described in subparagraph (A). The appropriation shall be reimbursed in full, out of appropriations available for paying those costs, for the amounts paid. Appropriations available for paying those costs shall be available for making the reimbursements.

(C) To ensure that the use of units and personnel of the National Guard of a State pursuant to a State drug interdiction and counter-drug activities plan does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the drug interdiction and counter-drug activities that units and personnel of the National Guard of a State may perform:

(i) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

(ii) National Guard personnel will not degrade their military skills as a result of performing the activities.

(iii) The performance of the activities will not result in a significant increase in the cost of training.

(iv) In the case of drug interdiction and counter-drug activities performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

(3) A unit or member of the National Guard of a State may be used, pursuant to a State drug interdiction and counter-drug activities plan approved by the Secretary of Defense under this section, to provide services or other assistance (other than air transportation) to an organization eligible to receive services under section 508 of this title if—

(A) the State drug interdiction and counter-drug activities plan specifically recognizes the organization as being eligible to receive the services or assistance;

(B) in the case of services, the performance of the services meets the requirements of paragraphs (1) and (2) of subsection (a) of section 508 of this title; and

(C) the services or assistance is authorized under subsection (b) or (c) of such section or in the State drug interdiction and counter-drug activities plan.

(c) Plan Requirements.— A State drug interdiction and counter-drug activities plan shall—

(1) specify how personnel of the National Guard of that State are to be used in drug interdiction and counter-drug activities;

(2) certify that those operations are to be conducted at a time when the personnel involved are not in Federal service;

(3) certify that participation by National Guard personnel in those operations is service in addition to training required under section 502 of this title;

(4) certify that any engineer-type activities (as defined by the Secretary of Defense) under the plan will be performed only by units and members of the National Guard;

(5) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general) that the use of the National Guard of the State for the activities proposed under the plan is authorized by, and is consistent with, State law; and

(6) certify that the Governor of the State or a civilian law enforcement official of the State designated by the Governor has determined that any activities included in the plan that are carried out in conjunction with Federal law enforcement agencies serve a State law enforcement purpose.

(d) Examination of Plan.—

(1) Before funds are provided to the Governor of a State under this section and before members of the National Guard of that State are ordered to full-time National Guard duty as authorized in subsection (b), the Secretary of Defense shall examine the adequacy of the plan submitted by the Governor under subsection (c). The plan as approved by the Secretary may provide for the use of personnel and equipment of the National Guard of that State to assist the Immigration and Naturalization Service in the transportation of aliens who have violated a Federal or State law prohibiting or regulating the possession, use, or distribution of a controlled substance.

(2) Except as provided in paragraph (3), the Secretary shall carry out paragraph (1) in consultation with the Director of National Drug Control Policy.

(3) Paragraph (2) shall not apply if—

(A) the Governor of a State submits a plan under subsection (c) that is substantially the same as a plan submitted for that State for a previous fiscal year; and

(B) pursuant to the plan submitted for a previous fiscal year, funds were provided to the State in accordance with subsection (a) or personnel of the National Guard of the State were ordered to perform full-time National Guard duty in accordance with subsection (b).

(e) Exclusion From End-Strength Computation.— Members of the National Guard on active duty or full-time National Guard duty for the purposes of administering (or during fiscal year 1993 otherwise implementing) this section shall not be counted toward the annual end strength authorized for reserves on active duty in support of the reserve components of the armed forces or toward the strengths authorized in sections 12011 and 12012 of title 10.

(f) End Strength Limitation.—

(1) Except as provided in paragraph (2), at the end of a fiscal year there may not be more than 4000 members of the National Guard—

(A) on full-time National Guard duty under section 502 (f) of this title to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days; or

(B) on duty under State authority to perform drug interdiction or counter-drug activities pursuant to an order to duty for a period of more than 180 days with State pay and allowances being reimbursed with funds provided under subsection (a)(1).

(2) The Secretary of Defense may increase the end strength authorized under paragraph (1) by not more than 20 percent for any fiscal year if the Secretary determines that such an increase is necessary in the national security interests of the United States.

(g) Annual Report.— The Secretary of Defense shall submit to Congress an annual report regarding assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

(1) The number of members of the National Guard excluded under subsection (e) from the computation of end strengths.

(2) A description of the drug interdiction and counter-drug activities conducted under State drug interdiction and counter-drug activities plans referred to in subsection (c) with funds provided under this section.

(3) An accounting of the amount of funds provided to each State.

(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform activities under the State drug interdiction and counter-drug activities plans.

(h) Statutory Construction.— Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform law enforcement functions authorized to be performed by the National Guard by the laws of the State concerned.

(i) Definitions.— For purposes of this section:

(1) The term “drug interdiction and counter-drug activities”, with respect to the National Guard of a State, means the use of National Guard personnel in drug interdiction and counter-drug law enforcement activities, including drug demand reduction activities, authorized by the law of the State and requested by the Governor of the State.

(2) The term “Governor of a State” means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(3) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

Section 113. Federal financial assistance for support of additional duties assigned to the Army National Guard

(a) Authority.— The Secretary of the Army may provide financial assistance to a State to support activities carried out by the Army National Guard of the State in the performance of duties that the Secretary has assigned, with the consent of the Chief of the National Guard Bureau, to the Army National Guard of the State. The Secretary shall determine the amount of the assistance that is appropriate for the purpose.

(b) Covered Activities.—

(1) Except as provided in paragraph (2), financial assistance may be provided for the performance of an activity by the Army National Guard under subsection (a) only if—

(A) the activity is carried out in the performance of a responsibility of the Secretary of the Army under paragraph (6), (10), or (11) of section 3013 (b) of title 10; and

(B) the Army National Guard was selected to perform the activity under competitive procedures that permit all qualified public-sector and private-sector sources to submit offers and be considered for selection to perform the activity on the basis of the offers.

(2) Paragraph (1)(B) does not apply to an activity that, on October 17, 1998, was performed for the Federal Government by employees of the Federal Government or employees of a State.

(c) Disbursement Through National Guard Bureau.— The Secretary of the Army shall disburse any contribution under this section through the Chief of the National Guard Bureau.

(d) Availability of Funds.— Funds appropriated for the Army for a fiscal year are available for providing financial assistance under this section in support of activities carried out by the Army National Guard during that fiscal year.

Section 114. Funeral honors functions at funerals for veterans

Subject to such regulations and restrictions as may be prescribed by the Secretary concerned, the performance of funeral honors functions by members of the National Guard at funerals for veterans of the armed forces may be treated by the Secretary concerned as a Federal function for which appropriated funds may be used. Any such performance of funeral honors functions at such a funeral may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 115 of this title.

Section 115. Funeral honors duty performed as a Federal function

(a) Order to Duty.— A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to funeral honors duty, with the consent of the member, to prepare for or perform funeral honors functions at the funeral of a veteran under section 1491 of title 10. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to perform funeral honors functions under this section without the consent of the Governor or other appropriate authority of the State concerned. Performance of funeral honors duty by such a member not on active duty or full-time National Guard duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.

(b) Service Credit.— A member ordered to funeral honors duty under this section shall be required to perform a minimum of two hours of such duty in order to receive—

(1) service credit under section 12732 (a)(2)(E) of title 10; and

(2) as directed by the Secretary concerned, either—

(A) the allowance under section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) Reimbursable Expenses.— A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under chapter 7 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) Regulations.— The exercise of authority under subsection (a) is subject to regulations prescribed by the Secretary of Defense.

Chapter 3—Personnel

Section 301. Federal recognition of enlisted members

To be eligible for Federal recognition as an enlisted member of the National Guard, a person must have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved. He becomes federally recognized upon enlisting in a federally recognized unit or organization of the National Guard.

Section 302. Enlistments, reenlistments, and extensions

- (a) Under regulations to be prescribed by the Secretary concerned, original enlistments in the National Guard may be accepted for—
 - (1) any specified term, not less than three years, for persons who have not served in an armed force; or
 - (2) any specified term, not less than one year, for persons who have served in any armed force.
- (b) Under regulations to be prescribed by the Secretary concerned, reenlistment in the National Guard may be accepted for any specified period, or, if the person last served in one of the highest five enlisted grades, for an unspecified period.
- (c) Enlistments or reenlistments in the National Guard may be extended—
 - (1) under regulations to be prescribed by the Secretary concerned, at the request of the member, for any period not less than six months; or

(2) by proclamation of the President, if Congress declares an emergency, until six months after termination of that emergency.

Section 303. Active and inactive enlistments and transfers

(a) Under regulations to be prescribed by the Secretary of the Army, a person qualified for enlistment in the active Army National Guard may be enlisted in the inactive Army National Guard for a single term of one or three years. Under regulations prescribed by the Secretary of the Air Force, a person qualified for enlistment in the active Air National Guard may be enlisted in the inactive Air National Guard for a single term of one or three years.

(b) Under such regulations as the Secretary of the Army may prescribe, an enlisted member of the active Army National Guard, not formerly enlisted in the inactive Army National Guard, may be transferred to the inactive Army National Guard. Under such regulations as the Secretary of the Air Force may prescribe, an enlisted member of the active Air National Guard, not formerly enlisted in the inactive Air National Guard, may be transferred to the inactive Air National Guard. Under such regulations as the Secretary concerned may prescribe, a person enlisted in or transferred to the inactive Army National Guard or the inactive Air National Guard may be transferred to the active Army National Guard or the active Air National Guard, as the case may be.

(c) In time of peace, no enlisted member may be required to serve for a period longer than that for which he enlisted in the active or inactive National Guard.

Section 304. Enlistment oath

Each person enlisting in the National Guard shall sign an enlistment contract and subscribe to the following oath:

“I do hereby acknowledge to have voluntarily enlisted this XX day of XXXX, 19X, in the XXXXXX National Guard of the State of XXXXXX for a period of XX year(s) under the conditions prescribed by law, unless sooner discharged by proper authority.

“I, XXXXXXXX, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and of the State of XXXXXX against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of XXXXXX and the orders of the officers appointed over me, according to law and regulations. So help me God.”

The oath may be taken before any officer of the National Guard of the State or Territory, or of Puerto Rico, or the District of Columbia, as the case may be, or before any other person authorized by the law of the jurisdiction concerned to administer oaths of enlistment in the National Guard.

Section 305. Federal recognition of commissioned officers: persons eligible

(a) The following categories are eligible for Federal recognition as commissioned officers of the National Guard:

- (1) Members of the National Guard.
- (2) Members of the Army, Navy, Air Force, or Marine Corps.
- (3) Former officers of the Army, Navy, Air Force, or Marine Corps.
- (4) Former enlisted members of the Army, Navy, Air Force, or Marine Corps who were discharged honorably or under honorable conditions.
- (5) Graduates of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy.

- (6) Graduates of a school, college, university, or officer's training camp who received military instruction under the supervision of a commissioned officer of the Regular Army or the Regular Air Force, and whose fitness for appointment has been certified by that officer.
 - (7) Civilians who are specially qualified for duty in a technical or staff branch or organization.
- (b) To be eligible for Federal recognition under this section with a view to serving as a nurse, a person must be a graduate of a hospital or university training school and a registered nurse.

Section 307. Federal recognition of officers: examination; certificate of eligibility

- (a) To be eligible for Federal recognition as an officer of the National Guard, a person must—
- (1) receive an appointment with a view to filling a vacancy in a federally recognized unit or organization of the National Guard;
 - (2) have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved; and
 - (3) except as provided in subsections (d) and (e) of this section, pass an examination for physical, moral, and professional fitness to be prescribed by the President, and subscribe to the oath of office prescribed by section 312 of this title.
- (b) The examination prescribed by subsection (a)—
- (1) shall be conducted, for the Army National Guard, by a board of three commissioned officers designated by the Secretary of the Army from members of the Regular Army or the Army National Guard of the United States, or both, and for the Air National Guard, by a board of three commissioned officers designated by the Secretary of the Air Force from members of the Regular Air Force or the Air National Guard of the United States, or both; and
 - (2) may be held before original appointment or promotion.
- (c) If such a board finds a person qualified, the Chief of the National Guard Bureau may issue to him a certificate of eligibility for Federal recognition for the office for which he was found qualified. If he is originally appointed or promoted within two years to that office, he is entitled to Federal recognition without further examination, except as to physical condition.
- (d) Subject to subsection (a)(1) and (2) and to such physical examination as may be prescribed, Federal recognition shall be extended to each officer of the Army Reserve who has qualified for appointment as an officer of the Army National Guard in his reserve grade. Similarly, Federal recognition shall be extended to each officer of the Air Force Reserve who has qualified for appointment as an officer of the Air National Guard. Federal recognition extended under this subsection is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.
- (e) Subject to subsection (a)(1) and (2), Federal recognition shall be extended to each officer of the Air Force Reserve who is appointed in a commissioned grade in the Air National Guard to fill a vacancy, if on the date on which he is appointed his reserve grade is the same as the grade in which he is appointed or his name is on a recommended list for promotion to that reserve grade.
- (f) Federal recognition extended under subsection (d) or (e) is effective from the date of appointment in the Army National Guard or the Air National Guard, as the case may be.

Section 308. Federal recognition of officers: temporary recognition

- (a) The Secretary of the Army may authorize the extension of temporary Federal recognition as an officer of the Army National Guard to any person who has passed the examination prescribed in section 307 (b) of this title, pending his appointment as a reserve officer of the Army. The Secretary of the Air Force may do likewise for a person who has passed that examination pending his appointment as a reserve officer of the Air Force. Temporary recognition so extended may be withdrawn at any time. If not sooner withdrawn or replaced by permanent recognition upon appointment as a reserve officer in the same grade, it terminates six months after its effective date.

(b) To be eligible for temporary Federal recognition under subsection (a), a person must take an oath that during the period of temporary recognition he will perform his Federal duties as if he had been appointed as a reserve officer of the Army or the Air Force, as the case may be.

Section 309. Federal recognition of National Guard officers: officers promoted to fill vacancies

Each officer of the National Guard who is promoted to fill a vacancy in a federally recognized unit of the National Guard, and who has been on the reserve active-status list or the active-duty list of the Army or the Air Force for at least one year and has completed the minimum years of service in grade specified in section 14303 of title 10, shall be examined for Federal recognition in the grade to which the officer is promoted.

Section 310. Federal recognition of National Guard officers: automatic recognition

(a) Notwithstanding sections 307 and 309 of this title, if a second lieutenant of the National Guard is promoted to the grade of first lieutenant to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade of first lieutenant, effective as of the date on which that officer has completed the service in the grade specified in section 14303 (a)(1) of title 10 and has met such other requirements as prescribed by the Secretary concerned under section 14308(b) of that title, if the officer has remained in an active status since the officer was so recommended.

(b) Notwithstanding sections 307 and 309 of this title, if an officer of the Army Reserve or the Air Force Reserve in a reserve grade above second lieutenant is appointed in the next higher grade in the National Guard to fill a vacancy in a federally recognized unit in the National Guard, Federal recognition is automatically extended to that officer in the grade in which the officer is so appointed in the National Guard if the officer has been recommended for promotion under chapter 1405 of title 10 and has remained in an active status since the officer was so recommended. The extension of Federal recognition under this subsection is effective as of the date when the officer is appointed in the National Guard.

Section 312. Appointment oath

Each person who is appointed as an officer of the National Guard shall subscribe to the following oath: "I, XXXXXX, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of XXXXXX against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of XXXXXX, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of XXXX in the National Guard of the State of XXXXXX upon which I am about to enter, so help me God."

Section 313. Appointments and enlistments: age limitations

(a) To be eligible for original enlistment in the National Guard, a person must be at least 17 years of age and under 45, or under 64 years of age and a former member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps. To be eligible for reenlistment, a person must be under 64 years of age.

(b) To be eligible for appointment as an officer of the National Guard, a person must—

- (1) be a citizen of the United States; and

(2) be at least 18 years of age and under 64.

Section 314. Adjutants general

- (a) There shall be an adjutant general in each State and Territory, Puerto Rico, and the District of Columbia. He shall perform the duties prescribed by the laws of that jurisdiction.
- (b) The President shall appoint the adjutant general of the District of Columbia and prescribe his grade and qualifications.
- (c) The President may detail as adjutant general of the District of Columbia any retired commissioned officer of the Regular Army or the Regular Air Force recommended for that detail by the commanding general of the District of Columbia National Guard. An officer detailed under this subsection is entitled to the basic pay and allowances of his grade.
- (d) The adjutant general of each State and Territory, Puerto Rico, and the District of Columbia, and officers of the National Guard, shall make such returns and reports as the Secretary of the Army or the Secretary of the Air Force may prescribe, and shall make those returns and reports to the Secretary concerned or to any officer designated by him.

Section 315. Detail of regular members of Army and Air Force to duty with National Guard

- (a) The Secretary of the Army shall detail commissioned officers of the Regular Army to duty with the Army National Guard of each State and Territory, Puerto Rico, and the District of Columbia. The Secretary of the Air Force shall detail commissioned officers of the Regular Air Force to duty with the Air National Guard of each State and Territory, Puerto Rico, and the District of Columbia. With the permission of the President, an officer so detailed may accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable in the President's discretion, without prejudicing his rank and without vacating his regular appointment.
- (b) The Secretary of the Army may detail enlisted members of the Regular Army for duty with the Army National Guard of each State and Territory, Puerto Rico, and the District of Columbia. The Secretary of the Air Force may detail enlisted members of the Regular Air Force for duty with the Air National Guard of each State and Territory, Puerto Rico, and the District of Columbia.

Section 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and noncommissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms.

Section 317. Command during joint exercises with Federal troops

When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

[Section 318 to 321. Repealed.]

Section 322. Discharge of enlisted members

- (a) An enlisted member of the National Guard shall be discharged when—
- (1) he becomes 64 years of age; or
 - (2) his Federal recognition is withdrawn.
- (b) An enlisted member who is discharged from the National Guard is entitled to a discharge certificate similar in form and classification to the corresponding certificate prescribed for members of the Regular Army or the Regular Air Force, as the case may be.
- (c) In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be.

Section 323. Withdrawal of Federal recognition

- (a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.
- (b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—
- (1) the Regular Army or the Army National Guard of the United States, or both, who out-rank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or
 - (2) the Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.
- If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.
- (c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 12105, 12213 (a), or 12214 (a) of title 10, his Federal recognition is withdrawn.
- (d) The Federal recognition of a reserve commissioned officer of the Army or the Air Force who is—
- (1) federally recognized as an officer of the National Guard; and
 - (2) subject to involuntary transfer to the Retired Reserve, transfer to an inactive status list, or discharge under chapter 1407, 1409, or 1411 of title 10;
- shall, if not sooner withdrawn, be withdrawn on the date of such involuntary transfer or discharge.

Section 324. Discharge of officers; termination of appointment

- (a) An officer of the National Guard shall be discharged when—
- (1) he becomes 64 years of age; or
 - (2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico or the District of Columbia, if he is a member of its National Guard.

Section 325. Relief from National Guard duty when ordered to active duty

(a) Relief Required.—

(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State or Territory, or of Puerto Rico or the District of Columbia, under paragraph (1) while serving on active duty in command of a National Guard unit if—

(A) the President authorizes such service in both duty statuses; and

(B) the Governor of his State or Territory or Puerto Rico, or the commanding general of the District of Columbia National Guard, as the case may be, consents to such service in both duty statuses.

(b) Return to State Status.— So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

Section 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts. Punishments shall be as provided by the laws of the respective States and Territories, Puerto Rico, and the District of Columbia.

Section 327. Courts-martial of National Guard not in Federal service: convening authority

(a) In the National Guard not in Federal service, general, special, and summary courts-martial may be convened as provided by the laws of the respective States and Territories, Puerto Rico, and the District of Columbia.

(b) In the National Guard not in Federal service—

(1) general courts-martial may be convened by the President;

(2) special courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command; and

(3) summary courts-martial may be convened—

(A) by the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where members of the National Guard are on duty; or

(B) by the commanding officer of a division, brigade, regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment.

(c) The convening authorities provided under subsection (b) are in addition to the convening authorities provided under subsection (a).

[Section 328 to 333. Repealed.]

[Section 334. Repealed.]

[Section 335. Repealed.]

Chapter 5—Training

Section 501. Training generally

- (a) The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force.
- (b) The training of the National Guard shall be conducted by the several States and Territories, Puerto Rico, and the District of Columbia in conformity with this title.

Section 502. Required drills and field exercises

- (a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall—
 - (1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and
 - (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 90 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless—

- (1) the number of members present equals or exceeds the minimum number prescribed by the President;
- (2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and
- (3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may—

- (1) without his consent, but with the pay and allowances provided by law; or
 - (2) with his consent, either with or without pay and allowances;
- be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay.

Section 503. Participation in field exercises

(a)

- (1) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force, as the case may be, may provide for the participation of the National Guard in encampments, maneuvers, outdoor target practice, or other exercises for field or coast-defense instruction, independently of or in conjunction with the Army or the Air Force, or both.
- (2) Paragraph (1) includes authority to provide for participation of the National Guard in conjunction with the Army or the Air Force, or both, in joint exercises for instruction to prepare the National Guard for response to civil emergencies and disasters.

(b) Amounts necessary for the pay, subsistence, transportation, and other proper expenses of any part of the National Guard of a State or Territory, Puerto Rico, or the District of Columbia participating in an exercise under subsection (a) may be set aside from funds allocated to it from appropriations for field or coast-defense instruction.

(c) Members of the National Guard participating in an exercise under subsection (a) may, after being mustered, be paid for the period beginning with the date of leaving home and ending with the date of return, as determined in advance. If otherwise correct, such a payment passes to the credit of the disbursing officer.

Section 504. National Guard schools and small arms competitions

(a) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, members of the National Guard may—

- (1) attend schools conducted by the Army or the Air Force, as appropriate;
- (2) conduct or attend schools conducted by the National Guard; or
- (3) participate in small arms competitions.

(b) Activities authorized under subsection (a) for members of the National Guard of a State or territory, Puerto Rico, or the District of Columbia may be held inside or outside its boundaries.

Section 505. Army and Air Force schools and field exercises

Under such regulations as the President may prescribe and upon the recommendation of the governor of any State or Territory or Puerto Rico or of the commanding general of the National Guard of the District of Columbia, the Secretary of the Army may authorize a limited number of members of its Army National Guard to—

- (1) attend any service school except the United States Military Academy, and to pursue a regular course of study at the school; or
- (2) be attached to an organization of the branch of the Army corresponding to the organization of the Army National Guard to which the member belongs, for routine practical instruction at or near an Army post during field training or other outdoor exercise.

Similarly, the Secretary of the Air Force may authorize a limited number of members of the Air National Guard to—

- (1) attend any service school except the United States Air Force Academy, and to pursue a regular course of study at the school; or
- (2) be attached to an organization of the Air Force corresponding to the organization of the Air National Guard to which the member belongs, for routine practical instruction at an air base during field training or other outdoor exercise.

Section 506. Assignment and detail of members of Regular Army or Regular Air Force for instruction of National Guard

(a) The President shall assign for instruction of the National Guard such members of the Regular Army or the Regular Air Force as he considers necessary.

(b) The Secretary of the Army may detail members of the Regular Army to attend an encampment, maneuver, or other exercise, for field or coast-defense instruction of the Army National Guard. Similarly, the Secretary of the Air Force may detail members of the Regular Air Force to attend exercises for field or coast-defense instruction of the Air National Guard. Members so detailed shall instruct the members of the National Guard at the exercise, as directed by the Secretary concerned, or as requested by the governor or commanding officer of the National Guard there assembled.

Section 507. Instruction in firing; supply of ammunition

Ammunition for instruction in firing and for target practice may be furnished, in such amounts as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, to units of the National Guard encamped at a post, camp, or air base. The instruction shall be under the direction of a commissioned officer selected for that purpose by the proper military commander.

Section 508. Assistance for certain youth and charitable organizations

(a) Authority To Provide Services.— Members and units of the National Guard may provide the services described in subsection (b) to an eligible organization in conjunction with training required under this chapter in any case in which—

- (1) the provision of such services does not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit;
 - (2) the services to be provided are not commercially available, or any commercial entity that would otherwise provide such services has approved, in writing, the provision of such services by the National Guard;
 - (3) National Guard personnel will enhance their military skills as a result of providing such services; and
 - (4) the provision of the services will not result in a significant increase in the cost of the training.
- (b) Authorized Services.— The services authorized to be provided under subsection (a) are as follows:
- (1) Ground transportation.
 - (2) Air transportation in support of Special Olympics.
 - (3) Administrative support services.
 - (4) Technical training services.
 - (5) Emergency medical assistance and services.
 - (6) Communications services.
- (c) Other Authorized Assistance.— Facilities and equipment of the National Guard, including military property of the United States issued to the National Guard and General Services Administration vehicles leased to the National Guard, and General Services Administration vehicles leased to the Department of Defense, may be used in connection with providing services to any eligible organization under this section.
- (d) Eligible Organizations.— The organizations eligible to receive services under this section are as follows:
- (1) The Boy Scouts of America.
 - (2) The Girl Scouts of America.
 - (3) The Boys Clubs of America.
 - (4) The Girls Clubs of America.
 - (5) The Young Men’s Christian Association.
 - (6) The Young Women’s Christian Association.
 - (7) The Civil Air Patrol.
 - (8) The United States Olympic Committee.
 - (9) The Special Olympics.
 - (10) The Campfire Boys.
 - (11) The Campfire Girls.
 - (12) The 4–H Club.
 - (13) The Police Athletic League.
 - (14) Any other youth or charitable organization designated by the Secretary of Defense.

Section 509. National Guard Challenge Program of opportunities for civilian youth

(a) Program Authority and Purpose.— The Secretary of Defense may use the National Guard to conduct a civilian youth opportunities program, to be known as the “National Guard Challenge Program”, which shall consist of at least a 22-week residential program and a 12-month post-residential mentoring period. The National Guard Challenge Program shall seek to improve life skills and employment potential of participants by providing military-based training and supervised work experience, together with the core program components of assisting participants to receive a high school diploma or its equivalent, leadership development, promoting fellowship and community service, developing life coping skills and job skills, and improving physical fitness and health and hygiene.

(b) Conduct of the Program.—

- (1) The Secretary of Defense shall provide for the conduct of the National Guard Challenge Program in such States as the Secretary considers to be appropriate.

- (2) The Secretary shall carry out the National Guard Challenge Program using—
- (A) funds appropriated directly to the Secretary of Defense for the program, except that the amount of funds appropriated directly to the Secretary and expended for the program in fiscal year 2001 or 2002 may not exceed \$62,500,000; and
 - (B) nondefense funds made available or transferred to the Secretary of Defense by other Federal agencies to support the program.
- (3) Federal funds made available or transferred to the Secretary of Defense under paragraph (2)(B) by other Federal agencies to support the National Guard Challenge Program may be expended for the program in excess of the fiscal year limitation specified in paragraph (2)(A).
- (4) The Secretary of Defense shall remain the executive agent to carry out the National Guard Challenge Program regardless of the source of funds for the program or any transfer of jurisdiction over the program within the executive branch. As provided in subsection (a), the Secretary may use the National Guard to conduct the program.
- (c) Program Agreements.—
- (1) To carry out the National Guard Challenge Program in a State, the Secretary of Defense shall enter into an agreement with the Governor of the State or, in the case of the District of Columbia, with the commanding general of the District of Columbia National Guard, under which the Governor or the commanding general will establish, organize, and administer the National Guard Challenge Program in the State.
 - (2) The agreement may provide for the Secretary to provide funds to the State for civilian personnel costs attributable to the use of civilian employees of the National Guard in the conduct of the National Guard Challenge Program.
- (d) Matching Funds Required.— The amount of assistance provided under this section to a State program of the National Guard Challenge Program may not exceed—
- (1) for fiscal year 1998, 75 percent of the costs of operating the State program during that year;
 - (2) for fiscal year 1999, 70 percent of the costs of operating the State program during that year;
 - (3) for fiscal year 2000, 65 percent of the costs of operating the State program during that year; and
 - (4) for fiscal year 2001 and each subsequent fiscal year, 60 percent of the costs of operating the State program during that year.
- (e) Persons Eligible To Participate in Program.— A school dropout from secondary school shall be eligible to participate in the National Guard Challenge Program. The Secretary of Defense shall prescribe the standards and procedures for selecting participants from among school dropouts.
- (f) Authorized Benefits for Participants.—
- (1) To the extent provided in an agreement entered into in accordance with subsection (c) and subject to the approval of the Secretary of Defense, a person selected for training in the National Guard Challenge Program may receive the following benefits in connection with that training:
 - (A) Allowances for travel expenses, personal expenses, and other expenses.
 - (B) Quarters.
 - (C) Subsistence.
 - (D) Transportation.
 - (E) Equipment.
 - (F) Clothing.
 - (G) Recreational services and supplies.
 - (H) Other services.
 - (I) Subject to paragraph (2), a temporary stipend upon the successful completion of the training, as characterized in accordance with procedures provided in the agreement.
 - (2) In the case of a person selected for training in the National Guard Challenge Program who afterwards becomes a member of the Civilian Community Corps under subtitle E of title I of the National and Community Service Act of 1990 (42 U.S.C. 12611 et seq.), the person may not receive a temporary stipend under paragraph (1)(I) while the person is a member of that Corps. The person may receive the temporary stipend after completing service in the Corps unless the

- person elects to receive benefits provided under subsection (f) or (g) of section 158 of such Act (42 U.S.C. 12618).
- (g) Program Personnel.—
- (1) Personnel of the National Guard of a State in which the National Guard Challenge Program is conducted may serve on full-time National Guard duty for the purpose of providing command, administrative, training, or supporting services for the program. For the performance of those services, any such personnel may be ordered to duty under section 502 (f) of this title for not longer than the period of the program.
 - (2) A Governor participating in the National Guard Challenge Program and the commanding general of the District of Columbia National Guard (if the District of Columbia National Guard is participating in the program) may procure by contract the temporary full time services of such civilian personnel as may be necessary to augment National Guard personnel in carrying out the National Guard Challenge Program in that State.
 - (3) Civilian employees of the National Guard performing services for the National Guard Challenge Program and contractor personnel performing such services may be required, when appropriate to achieve the purposes of the program, to be members of the National Guard and to wear the military uniform.
- (h) Equipment and Facilities.—
- (1) Equipment and facilities of the National Guard, including military property of the United States issued to the National Guard, may be used in carrying out the National Guard Challenge Program.
 - (2) Activities under the National Guard Challenge Program shall be considered noncombat activities of the National Guard for purposes of section 710 of this title.
- (i) Status of Participants.—
- (1) A person receiving training under the National Guard Challenge Program shall be considered an employee of the United States for the purposes of the following provisions of law:
 - (A) Subchapter I of chapter 81 of title 5 (relating to compensation of Federal employees for work injuries).
 - (B) Section 1346 (b) and chapter 171 of title 28 and any other provision of law relating to the liability of the United States for tortious conduct of employees of the United States.
 - (2) In the application of the provisions of law referred to in paragraph (1)(A) to a person referred to in paragraph (1)—
 - (A) the person shall not be considered to be in the performance of duty while the person is not at the assigned location of training or other activity or duty authorized in accordance with a program agreement referred to in subsection (c), except when the person is traveling to or from that location or is on pass from that training or other activity or duty;
 - (B) the person's monthly rate of pay shall be deemed to be the minimum rate of pay provided for grade GS-2 of the General Schedule under section 5332 of title 5; and
 - (C) the entitlement of a person to receive compensation for a disability shall begin on the day following the date on which the person's participation in the National Guard Challenge Program is terminated.
 - (3) A person referred to in paragraph (1) may not be considered an employee of the United States for any purpose other than a purpose set forth in that paragraph.
- (j) Supplemental Resources.— To carry out the National Guard Challenge Program in a State, the Governor of the State or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard may supplement funds made available under the program out of other resources (including gifts) available to the Governor or the commanding general. The Governor or the commanding general may accept, use, and dispose of gifts or donations of money, other property, or services for the National Guard Challenge Program.
- (k) Report.— Within 90 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the design, conduct, and effectiveness of the National Guard Challenge Program during the preceding fiscal year. In preparing the report, the Secretary shall coordinate with the Governor

of each State in which the National Guard Challenge Program is carried out and, if the program is carried out in the District of Columbia, with the commanding general of the District of Columbia National Guard.

(l) Definitions.— In this section:

(1) The term “State” includes the Commonwealth of Puerto Rico, the territories, and the District of Columbia.

(2) The term “school dropout” means an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(m) Regulations.— The Secretary of Defense shall prescribe regulations to carry out the National Guard Challenge Program. The regulations shall address at a minimum the following:

(1) The terms to be included in the program agreements required by subsection (c).

(2) The qualifications for persons to participate in the program, as required by subsection (e).

(3) The benefits authorized for program participants, as required by subsection (f).

(4) The status of National Guard personnel assigned to duty in support of the program under subsection (g).

(5) The conditions for the use of National Guard facilities and equipment to carry out the program, as required by subsection (h).

(6) The status of program participants, as described in subsection (i).

(7) The procedures to be used by the Secretary when communicating with States about the program.

Chapter 7—Service, Supply, & Procurement

Section 701. Uniforms, arms, and equipment to be same as Army or Air Force

So far as practicable, the same types of uniforms, arms, and equipment as are issued to the Army shall be issued to the Army National Guard, and the same types of uniforms, arms, and equipment as are issued to the Air Force shall be issued to the Air National Guard.

Section 702. Issue of supplies

(a) Under such regulations as the President may prescribe, the Secretary of the Army and the Secretary of the Air Force may buy or manufacture and, upon requisition of the governor of any State or Territory or Puerto Rico or the commanding general of the National Guard of the District of Columbia, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

(b) Whenever the Secretary concerned is satisfied that the Army National Guard or the Air National Guard, as the case may be, of any State or Territory, Puerto Rico, or the District of Columbia is properly organized, armed, and equipped for field duty, funds allotted to that jurisdiction for its Army National Guard or Air National Guard may be used to buy any article issued by the Army or the Air Force, as the case may be.

(c) Under such regulations as the President may prescribe, the issue of new types of equipment, small arms, or field guns to the National Guard of any State or Territory, Puerto Rico, or the District of Columbia shall be without charge against appropriations for the National Guard.

(d) No property may be issued to the National Guard of a State or Territory, Puerto Rico, or the District of Columbia, unless that jurisdiction makes provision, satisfactory to the Secretary concerned, for its protection and care.

Section 703. Purchases of supplies by States from Army or Air Force

(a) Subject to the approval of the Secretary of the Army, any State or Territory, Puerto Rico, or the District of Columbia may buy from the Department of the Army, for its National Guard or the officers thereof, supplies and military publications furnished to the Army, in addition to other supplies issued to its Army National Guard. On the same basis, it may buy similar property from the Department of the Air Force. A purchase under this subsection shall be for cash, at cost plus transportation.

(b) In time of actual or threatened war, the United States may requisition for military use any property bought under subsection (a). Credit for the return in kind of property so requisitioned shall be given to the State or Territory, Puerto Rico, or the District of Columbia from which it is received.

(c) Proceeds of sales by the Department of the Army and the Department of the Air Force under this section shall be credited to the appropriations from which the property was purchased, shall not be covered into the Treasury, and may be used to replace property sold under this section.

Section 704. Accountability: relief from upon order to active duty

Upon ordering any part of the Army National Guard of the United States or the Air National Guard of the United States to active duty, the President may, upon such terms as he may prescribe, relieve the State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, of accountability for property of the United States previously issued to it for the use of that part.

Section 705. Purchase of uniforms and equipment by officers of National Guard from Army or Air Force

Officers of the Army National Guard not in Federal service may buy articles of individual clothing and equipment from the Department of the Army, under such regulations as the Secretary of the Army may prescribe. On the same basis, officers of the Air National Guard not in Federal service may buy those items from the Department of the Air Force. Purchases under this section shall be for cash, at average current costs, including overhead, as determined by the Secretary concerned.

Section 706. Return of arms and equipment upon relief from Federal service

So far as practicable, whenever units, organizations, or members of the National Guard are returned to their National Guard status under section 325 (b) of this title, arms and equipment that the Secretary concerned determines are sufficient to accomplish their peacetime mission shall be returned with them.

Section 707. Use of public buildings for offices by instructors

Whenever practicable, instructors of the National Guard shall use State armories or other public buildings for offices.

Section 708. Property and fiscal officers

- (a) The Governor of each State or Territory and Puerto Rico, and the commanding general of the National Guard of the District of Columbia, shall appoint, designate or detail, subject to the approval of the Secretary of the Army and the Secretary of the Air Force, a qualified commissioned officer of the National Guard of that jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be, to be the property and fiscal officer of that jurisdiction. If the officer is not on active duty, the President may order him to active duty, with his consent, to serve as a property and fiscal officer.
- (b) Each property and fiscal officer shall—
- (1) receipt and account for all funds and property of the United States in the possession of the National Guard for which he is property and fiscal officer; and
 - (2) make returns and reports concerning those funds and that property, as required by the Secretary concerned.
- (c) When he ceases to hold that assignment, a property and fiscal officer resumes his status as an officer of the National Guard.
- (d) The Secretaries shall prescribe a maximum grade, commensurate with the functions and responsibilities of the office, but not above colonel, for the property and fiscal officer of the United States for the National Guard of each State or Territory, Puerto Rico, and the District of Columbia.
- (e) The Secretary of the Army and the Secretary of the Air Force shall prescribe joint regulations necessary to carry out subsections (a)–(d).
- (f) A property and fiscal officer may intrust money to an officer of the National Guard to make disbursements as his agent. Both the officer to whom money is intrusted, and the property and disbursing officer intrusting the money to him, are pecuniarily responsible for that money to the United States. The agent officer is subject, for misconduct as an agent, to the liabilities and penalties prescribed by law in like cases for the property and fiscal officer for whom he is acting.

Section 709. Technicians: employment, use, status

- (a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in—
- (1) the administration and training of the National Guard; and
 - (2) the maintenance and repair of supplies issued to the National Guard or the armed forces.
- (b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:
- (1) Be a military technician (dual status) as defined in section 10216 (a) of title 10.
 - (2) Be a member of the National Guard.
 - (3) Hold the military grade specified by the Secretary concerned for that position.
 - (4) While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.
- (c)
- (1) A person may be employed under subsection (a) as a non-dual status technician (as defined by section 10217 of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.
 - (2) The total number of non-dual status technicians in the National Guard is specified in section 10217 (c)(2) of title 10.
- (d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.

(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who—

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military technician (dual status) employment by the adjutant general of the jurisdiction concerned; and

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(5) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this section.

(h) Notwithstanding sections 5544 (a) and 6101 (a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

Section 710. Accountability for property issued to the National Guard

(a) All military property issued by the United States to the National Guard remains the property of the United States.

(b) The Secretary of the Army shall prescribe regulations for accounting for property issued by the United States to the Army National Guard and for the fixing of responsibility for that property. The Secretary of the Air Force shall prescribe regulations for accounting for property issued by the United States to the Air National Guard and for the fixing of responsibility for that property. So far as practicable, regulations prescribed under this section shall be uniform among the components of each service.

(c) Under regulations prescribed by the Secretary concerned under subsection (b), liability for the value of property issued by the United States to the National Guard that is lost, damaged, or destroyed may be charged

- (1) to a member of the Army National Guard or the Air National Guard when in similar circumstances a member of the Army or Air Force serving on active duty would be so charged, or
- (2) to a State or Territory, Puerto Rico, or the District of Columbia when the property is lost, damaged, or destroyed incident to duty directed pursuant to the laws of, and in support of the authorities of, such jurisdiction. Liability charged to a member of the Army National Guard or the Air National Guard shall be paid out of pay due to the member for duties performed as a member of the National Guard, unless the Secretary concerned shall for good cause remit or cancel that liability. Liability charged to a State or Territory, Puerto Rico, or the District of Columbia shall be paid from its funds or from any other non-Federal funds.
- (d) If property surveyed under this section is found to be unserviceable or unsuitable, the Secretary concerned or his designated representative shall direct its disposition by sale or otherwise. The proceeds of the following under this subsection shall be deposited in the Treasury under section 4(b)(22) of the Permanent Appropriation Repeal Act, 1934:
- (1) A sale.
 - (2) A stoppage against a member of the National Guard.
 - (3) A collection from a person, or from a State or Territory, Puerto Rico, or the District of Columbia, to reimburse the United States for the loss or destruction of, or damage to, the property.
- (e) If a State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, neglects or refuses to pay for the loss or destruction of, or damage to, property charged against it under subsection (c), the Secretary concerned may bar it from receiving any part of appropriations for the Army National Guard or the Air National Guard, as the case may be, until the payment is made.
- (f)
- (1) Instead of the procedure prescribed by subsections (b), (c), and (d), property issued to the National Guard that becomes unserviceable through fair wear and tear in service may, under regulations to be prescribed by the Secretary concerned, be sold or otherwise disposed of after an inspection, and a finding of unserviceability because of that wear and tear, by a commissioned officer designated by the Secretary. The State or Territory, Puerto Rico, or the District of Columbia, whichever is concerned, is relieved of accountability for that property.
 - (2) In designating an officer to conduct inspections and make findings for purposes of paragraph (1), the Secretary concerned shall designate—
 - (A) in the case of the Army National Guard, a commissioned officer of the Regular Army or a commissioned officer of the Army National Guard who is also a commissioned officer of the Army National Guard of the United States; and
 - (B) in the case of the Air National Guard, a commissioned officer of the Regular Air Force or a commissioned officer of the Air National Guard who is also a commissioned officer of the Air National Guard of the United States.

Section 711. Disposition of obsolete or condemned property

Each State and Territory, Puerto Rico, and the District of Columbia shall, upon receiving new property issued to its National Guard to replace obsolete or condemned issues of property, return the replaced property to the Department of the Army or the Department of the Air Force, as the case may be, or otherwise dispose of it, as the Secretary concerned directs. No money credit may be allowed for property disposed of under this section.

Section 712. Disposition of proceeds of condemned stores issued to National Guard

The following shall be covered into the Treasury:

- (1) The proceeds from sales of condemned stores issued to the National Guard of a State or Territory, Puerto Rico, or the District of Columbia, and not charged against its allotment.

- (2) The net proceeds from collections made from any person to reimburse the United States for the loss or destruction of, or damage to, property described in clause (1).
- (3) Stoppage against members of the National Guard for the loss or destruction of, or damage to, property described in clause (1).

Section 713. Official mail: free transmission

Units and headquarters of the National Guard, whether or not in Federal service, have the same privilege of free mailing of official matter as the Department of Defense.

Section 714. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a member of the National Guard who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

- (1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.
- (2) Surviving spouse.
- (3) Children and their descendants, by representation.
- (4) Father and mother in equal parts or, if either is dead, the survivor.
- (5) Legal representative.
- (6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary concerned. So far as practicable, these regulations shall be uniform with those prescribed for the armed forces under section 2771 (b) of title 10.

(c) Under such regulations as the Secretary concerned may prescribe, payments under subsection (a) shall be made by the Department of the Army or the Department of the Air Force, as the case may be.

(d) A payment under this section bars recovery by any other person of the amount paid.

Section 715. Property loss; personal injury or death: activities under certain sections of this title

(a) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than \$100,000 a claim against the United States for—

- (1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;
- (2) damage to, or loss of, personal property, including property bailed to the United States or the National Guard and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or
- (3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provision of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

- (b) A claim may be allowed under subsection (a) only if—
- (1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;
 - (2) it is not covered by section 2734 of title 10 or section 2672 of title 28;
 - (3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to his service;
 - (4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and
 - (5) it is substantiated as prescribed in regulations of the Secretary concerned.
- For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.
- (c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.
- (d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.
- (e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.
- (f) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.
- (g) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.
- (h) In this section, “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

Section 716. Claims for overpayment of pay and allowances, and travel and transportation allowances

- (a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the National Guard, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—
- (1) the Director of the Office of Management and Budget; or
 - (2) the Secretary concerned, as defined in section 101 (5) of title 37, when—
 - (A) the claim is in an amount aggregating not more than \$1,500; and
 - (B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.
- (b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—
- (1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

- (2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.
- (c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.
- (d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.
- (e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.
- (f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.