

RESERVES

Reserve Mandatory Separation Date Extension

You have requested our opinion as to whether reserve line officers can unilaterally request and consequently be considered for extension of their mandatory separation date (MSD), without AF/RE first identifying an Air Force need, soliciting applications, and holding a continuation board in accordance with AFI 36-2504, Chapter 10. You have advised that the processing of such unilateral requests for continuation is the current practice.

10 U.S.C. § 14701, Selection of Officers for Continuation on the Reserve Active-Status List, provides that a reserve officer of the Air Force who is required to be removed from the reserve active-status list under 10 U.S.C. §§ 14505 – 14507,¹ *may, subject to the needs of the Air Force*, be considered for continuation on the reserve active-status list under regulations prescribed by the Secretary of Defense, and that the Secretary of Defense *shall* prescribe regulations for the administration of the continuation provisions (emphasis added).

Pursuant to this statutory mandate, the Secretary of Defense promulgated DoDI 1320.08, *Continuation of Commissioned Officers on Active Duty and on the Reserve Active Status List*, (14 Mar 07). Paragraph 6.2 of the DoDI provides that commissioned officers on the reserve active-status list serving in the grade of O-3 *may* be considered for continuation *subject to the needs of the military service* and 10 U.S.C. § 14701 (emphasis added). Paragraph 6.3 provides that commissioned officers on the reserve active-status list serving in the grade of O-4 *may* be considered for continuation *subject to the needs of the military service* and 10 U.S.C. § 14701 (emphasis added). Paragraph 6.5 addresses, in part, the retention of officers in the grades of O-5 and O-6 on the reserve active-status list. Paragraph 6.5.1 provides that for commissioned officers in the grade of O-5 who are subject to removal from the reserve active-status list according to 10 U.S.C. § 14507, the Secretary of the Military Department concerned may defer

¹ 10 U.S.C. § 14505 provides that a captain on the reserve active-status list of the Air Force who has been twice passed over for promotion to major shall be separated no later than the first day of the seventh month after the month of being passed over the second time, unless selected for continuation under 10 U.S.C. § 14701. 10 U.S.C. § 14506 provides that a major on the reserve active-status list of the Air Force who has been twice passed over for promotion to lieutenant colonel shall be removed from the list no later than the first day of the month after the month in which the officer completes 20 years of commissioned service or the first day of the seventh month after the month of being passed over the second time. 10 U.S.C. § 14507 provides that a lieutenant colonel on the reserve active-status list of the Air Force who has been twice passed over for promotion to colonel shall be removed from the list no later than the first day of the month after the month in which the officer completes 28 years of commissioned service, unless selected for continuation under 10 U.S.C. § 14701, and that a colonel on the reserve active-status list of the Air Force who has been twice passed over for promotion to brigadier general shall be removed from the list no later than the first day of the month after the month in which the officer completes 30 years of commissioned service, unless selected for continuation under 10 U.S.C. § 14701.

the removal of such officers with particular skills for up to a maximum of 33 years of commissioned service.² Paragraph 6.5.2 provides that for commissioned officers in the grade of O-6 who are subject to removal from the reserve active-status list according to 10 U.S.C. § 14507, the Secretary of the Military Department concerned may defer the removal of such officers with particular skills for up to a maximum of 35 years of commissioned service.³

The Air Force has further implemented Secretary of Defense instructions in this area through AFI 36-2504, *Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force*, Chapter 10 Continuation Boards (9 Jan 03, certified current 22 Jan 10). According to the AFI, the purpose of continuation boards is to retain in an active status, reserve officers who would otherwise be required to separate due to twice failing promotion to the next higher grade or reaching their maximum time in service (lieutenant colonel and colonel only). See paragraph 10.1. The AFI sets out the process to be followed to establish and hold a continuation board. First, the Secretary of the Air Force must determine a service need exists. Paragraph 10.3.1. In order to make such a determination, Competitive Category Corps Chiefs and Line of the Air Force (LAF) Functional Managers are required to inform HQ USAF/REP (USAFR) that continuation is desired based on “critical skill needs.” Paragraph 10.2.2. Based on the request, HQ USAF/REP recommends to the Secretary quotas and length of continuation for each competitive category based on Air Force requirements. Paragraph 10.2.3.2. From this input, the Secretary determines if Air Force requirements warrant holding a continuation board. Paragraph 10.2.1. Once the Secretary makes this determination, HQ ARPC/DPJ notifies officers eligible to apply for consideration by a continuation board, paragraph 10.3.1,⁴ and a continuation board is subsequently held. The AFI specifically states that, “Individual application *will not* be accepted for continuation until HQ USAF/RE determines a *need* for specific grades of skills exists within the entire USAFR.” Paragraph 10.1 (emphasis added).

As further implementation of the Secretary of Defense instructions on continuation boards, then-Assistant Secretary of the Air Force Michael L. Dominguez issued an “Action of the Secretary of the Air Force” memorandum dated 19 April 2006, delegating the authority to continue a commissioned officer otherwise required to be removed from the reserve active-status list under 10 U.S.C. §§ 14505 – 14507 to the Director, Air Force Personnel Council, only in those

² 10 U.S.C. § 14701 provides that a reserve officer who holds the grade of lieutenant colonel may not be continued on the reserve active-status list for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

³ 10 U.S.C. § 14701 provides that a reserve officer who holds the grade of colonel may not be continued on the reserve active-status list for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

⁴ Not all officers with the specific grades and skills need be invited to apply for continuation. See AFI 36-2504, paragraph 10.1 (“When the SAF determines there is a need to retain additional officers in specific grades and competitive categories, officers meeting one of the above requirements *may* be invited to apply for continuation.”) (emphasis added).

individual cases where AF/RE determines a continuation board is not practicable and unusual circumstances warrant individual processing to meet the needs of the Air Force.⁵

When read together, AFI 36-2504 and the 19 April 2006 Secretary of the Air Force Action memorandum are not inconsistent. Both require that AF/RE first determine an Air Force need for the specific grades and skills exist. AFI 36-2504 provides that AF/RE is to make a recommendation to the Secretary to hold a continuation board based on the need. The 2006 Secretary of the Air Force Action memorandum provides that AF/RE is to make a recommendation to the Director, Air Force Personnel Council, that individual processing without a continuation board is warranted based on the need. In both instances, individuals are to be solicited to apply for continuation. The main difference between the AFI and the Action memorandum is in the manner officers are selected for continuation; in one instance a continuation board selects them and in the other instance the Director, Air Force Personnel Council, selects them.

Since the statutes upon which the AFI and Action memorandum are based leave the administration of the continuation process up to the discretion of the Secretary of Defense through each Military Department, the policy prohibition of AFI 36-2504 against individual application for continuation prior to AF/RE determination of grade and skill needs within the entire USAFR is not inconsistent with congressional intent. As such, the Air Force is well within its discretion in promulgating regulations that prohibit unilateral requests for extension of service past one's mandatory separation date (MSD) prior to AF/RE first identifying a need and soliciting applications. Since the prohibition is regulatory and not statutory, however, the Secretary also has the discretion to permit such unilateral applications to process through.

In response to your question then, since the Air Force has promulgated a regulation that prohibits unilateral requests for extension of service past one's mandatory separation date (MSD) prior to AF/RE first identifying a need and soliciting applications, the practice of processing such unilateral requests for continuation is in contravention of the regulation. The 19 April 2006 Secretary of the Air Force Action memorandum does not provide any authority to process such unilateral requests prior to AF/RE first identifying a need and soliciting applications, and cannot be used as a basis for processing such unilateral requests. Once an Air Force need has been appropriately identified and applications solicited, both AFI 36-2504 and the 19 April 2006 Secretary of the Air Force Action memorandum provide authority to select officers for continuation on the reserve active-status list past their mandatory separation date (MSD).

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⁵ This 19 April 2006 Secretary of the Air Force memorandum has not been superseded and is still in effect. See HAFMD 1-24, *Assistant Secretary of the Air Force (Manpower and Reserve Affairs)*, paragraph 6, (15 Dec 08) ("Re-delegations of authorities made pursuant to [SAFO 240.8 of Dec 17, 1999] prior to the date of issuance of this HAF Mission Directive [Dec 15, 2008], . . . remain effective insofar as such re-delegations are not inconsistent with the terms of this HAF Mission Directive, or unless superseded by a new re-delegation.").