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APPROVED
DEC 30 1974



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 24 1974

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Colorado
12/30
To Archive
1/2/75

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3191 - Involuntary discharge
of certain Army officers
Sponsor - Sen. Stennis (D) Mississippi and
Sen. Thurmond (R) South Carolina

Last Day for Action

December 30, 1974 - Monday

Purpose

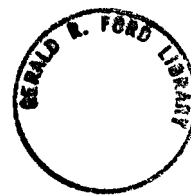
Provides temporary authority for 3 years for the Secretary of the Army to involuntarily discharge commissioned, Regular Army officers below the rank of major when there is a reduction in force.

Agency Recommendations

Office of Management and Budget	Approval
Department of Defense	Approval

Discussion

The enrolled bill embodies the major features of a Department of Defense legislative proposal. It would permit the Secretary of the Army, whenever there is a reduction in force, to involuntarily discharge commissioned, Regular Army officers below the rank of major (i.e., second lieutenants, first lieutenants and captains) upon the recommendation of a board of officers which he would appoint for the purpose of recommending such discharges. The authority provided under the bill would be effective for a period of 3 years following the date of enactment of S. 3191 (the Defense proposal requested 2-year authority).



An officer selected for removal under this legislation would be retired, if he is eligible and so requests, or honorably discharged within 90 days after receiving notice of his selection. The bill provides for readjustment payments of not to exceed \$15,000 for each officer involuntarily discharged who has served at least 5 years of continuous active duty. If an officer receives a readjustment payment and subsequently becomes eligible for retirement, however, the bill would require recoupment of 75 percent of the amount of his readjustment payment from his retired pay.

Officers who are within 2 years of attaining retirement eligibility would not be subject to involuntary discharge under S. 3191. The provisions of the bill also would not apply to officers who are awaiting separation for failure of selection to the next higher grade, to officers who have been recommended for separation for cause, such as moral or professional dereliction of duty, and to probationary officers (those with less than 3 years of active, commissioned service in the Regular Army) selected for discharge under the discretionary authority of the Secretary of the Army.

With the termination of U.S. military involvement in Vietnam, the strength of the Army has been significantly reduced. These reductions have necessitated the involuntary release from active duty of a great number of Reserve Army officers who, unlike their Regular Army counterparts, may be involuntarily discharged during a reduction in force under existing statutory authorities. Enactment of the enrolled bill, by providing similar authority to involuntarily discharge Regular Army officers, would permit additional, required force reductions in fiscal year 1976 to be made from all officers equally, without regard to component, thus providing a measure of equity for affected reserve officers and at the same time ensuring the retention of those officers who have demonstrated the most potential.

Approval of S. 3191 would have no cost implications. It would merely allow a regular officer to be involuntarily separated in lieu of a reserve officer, but, in either case, an officer so discharged would be entitled to readjustment pay.

Nelfred H. Rommel

Assistant Director for
Legislative Reference



Enclosures

THE WHITE HOUSE
WASHINGTON

ACTION

Last Day: December 30

December 27, 1974

MEMORANDUM FOR THE PRESIDENT
FROM: KEN COLLE *C*
SUBJECT: Enrolled Bill S. 3191 - Involuntary
Discharge of Certain Army Officers

Attached for your consideration is S. 3191, sponsored by Senator Stennis and Senator Thurmond, which provides temporary authority for three years for the Secretary of the Army to involuntarily discharge commissioned, Regular Army officers below the rank of Major when there is a reduction in force.

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Phil Areeda, Max Friedersdorf and the NSC all recommend approval.

RECOMMENDATION

That you sign S. 3191 (Tab B).

MA-7





DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

20 DEC 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, DC 20503

Dear Mr. Ash:

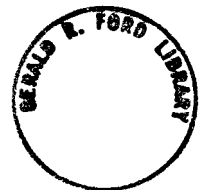
The Secretary of Defense has delegated responsibility to the Department of the Army for reporting the views of the Department of Defense on enrolled enactment S. 3191, 93d Congress, "To amend title 10, United States Code, to provide that commissioned officers of the Army in regular grades below major may be involuntarily discharged whenever there is a reduction in force."

The Department of the Army on behalf of the Department of Defense recommends approval of the enrolled enactment.

This enactment provides the authority for the Secretary of the Army, or his designee, to convene boards which would be empowered to determine whether certain Regular Army officers below the grade of permanent major should be discharged during a period when the personnel strength of the Army is being reduced. Officers in the Army Reserve who are serving on active duty are subject to release from active duty during such periods. This enactment would enable the Secretary of the Army to consider certain regular commissioned officers for release from active duty during such a reduction in a manner similar to that authorized for release of reserve officers during a reduction in force.

The enactment of this measure is urgent because the Army must reduce end strength for fiscal year 1976 and an involuntary reduction in force will be necessary. This enactment would permit equity in the officer corps by treating two groupings of career-committed officers alike.

Approval of the enactment will have no cost implications. This would substitute the involuntary discharge of a regular officer in lieu of the involuntary release of a reserve officer. Both would be entitled to readjustment pay.



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20315



OFFICE OF MANAGEMENT
AND BUDGET

74 DEC 20 PM 2:28

RECEIVED

Honorable Roy L. Ash

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of the Defense.

Sincerely,

A handwritten signature in cursive script that reads "Herman R. Staudt". The signature is written in dark ink and is positioned centrally on the page, below the word "Sincerely,".

Herman R. Staudt
Acting Secretary of the Army

THE WHITE HOUSE
WASHINGTON

12/24/74

TO: WARREN HENDRIKS

RL
Robert D. Linder

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 834

Date: December 26, 1974

Time: 9:00 a.m.

FOR ACTION: NSC/S
Max Friedersdorf
Phil Areeda ✓

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Thursday, December 26

Time: 3:00 p.m.

SUBJECT:

Enrolled Bill s.3191 - Involuntary discharge
of certain Army officers

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*No objection
of Areeda*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE
WASHINGTON

December 26, 1974

MEMORANDUM FOR: WARREN HENDRIKS
FROM: *Max L. Friedersdorf* MAX L. FRIEDERSDORF
SUBJECT: Action Memorandum - Log No. 834
Enrolled Bill S. 3191 - Involuntary discharge
of certain Army officers

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 834

Date: December 26, 1974

Time: 9:00 a.m.

FOR ACTION: NSC/S *no obj*
 Max Friedersdorf *O.k.*
 Phil Areeda *no obj.*

cc (for information): Warren Hendriks
 Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Thursday, December 26

Time: 3:00 p.m.

SUBJECT:

Enrolled Bill s.3191 - Involuntary discharge
 of certain Army officers

ACTION REQUESTED:

- | | |
|---|--|
| <input type="checkbox"/> For Necessary Action | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

 K. R. COLE, JR.
 For the President

AUTHORIZING THE INVOLUNTARY DISCHARGE OF COMMISSIONED REGULAR ARMY OFFICERS IN PERMANENT GRADES BELOW MAJOR WHENEVER THERE IS A REDUCTION IN THE ACTIVE DUTY OFFICER PERSONNEL STRENGTH OF THE ARMY

OCTOBER 4, 1974.—Ordered to be printed

Mr. NUNN, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany S. 3191]

The Committee on Armed Services, to which was referred the bill (S. 3191) to amend title 10, United States Code, to provide that commissioned officers of the Army in regular grades below major may be involuntarily discharged whenever there is a reduction in force, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

COMMITTEE AMENDMENT IN THE FORM OF A SUBSTITUTE

The committee amended the bill by striking all after the enacting clause and substituting new language reflecting changes in this bill.

NATURE OF THE COMMITTEE AMENDMENT

The bill as originally submitted would have expired two years after the date of enactment. During a hearing on the bill it was found that a two-year duration may not be sufficient, and the Army recommended a three-year duration. The committee felt there was sufficient justification for a three-year involuntary discharge authority and amended the bill to grant the authority for that period.

The remainder of the committee amendment was of a technical and clarifying nature to make the bill consistent and clear throughout.

PURPOSE OF THE BILL

The legislation would authorize the Secretary of the Army to discharge or retire Regular Army officers holding the permanent grades of

second lieutenant, first lieutenant and captain upon the recommendation of a board of officers convened by him whenever there is a reduction in the commissioned officer strength of the Army.

Each discharged officer who has between five and eighteen years of continuous active duty would receive readjustment pay at the rate of two months' basic pay of the grade in which he is serving at discharge, times the number of years of his active service. Maximum payment would be \$15,000.

The number of officers which may be separated under this authority would not be limited. However, the authority would expire three years after the legislation is enacted.

OTHER ASPECTS OF THE BILL

An officer recommended for separation would, not later than 90 days following notification, be either retired if he is eligible and so requests or be honorably discharged. If such officer receives readjustment payment and later qualifies for retirement based on active duty service with any Armed Service or the Coast Guard, 75 percent of the readjustment payment would be recouped by the Federal Government. This repayment policy is comparable to the policy employed in the involuntary separation of reserve officers.

The proposed legislation excludes the following categories of officers: (1) officers holding the regular grade of first lieutenant or captain who are awaiting separation for having twice failed of selection to the permanent grade of captain and major, respectively, (2) officers holding the permanent grade of second lieutenant who are awaiting separation for failure of selection to the permanent grade of first lieutenant, (3) officers recommended for separation as the result of show-cause proceedings (substandard duty performance, moral or professional dereliction of duty, or in the interests of national security), or (4) probationary officers (i.e., officers with less than three years of active commissioned service in the Regular Army) selected for discharge under the discretionary authority of the Secretary of the Army.

In addition, a Regular Army officer who is within two years of becoming eligible for retired pay may not be involuntarily discharged under this authority before he becomes eligible for that pay, unless his discharge is approved by the Secretary of the Army.

EXISTING LAW

Under existing law, a Regular Army officer holding the regular grade of second lieutenant, first lieutenant or captain can be separated only by reason of promotion failure, courts-martial, show-cause proceedings or at the discretion of the Secretary of the Army if he is in a probationary status (i.e., less than three years of active commissioned service in the Regular Army). The most common reason for separation of officers in these grades is through promotion failure.

An officer holding the permanent grade of second lieutenant can be discharged within his first three years of active commissioned service (i.e. probationary status) if the Secretary of the Army finds him not fully qualified for promotion to the permanent grade of first lieutenant.

An officer holding the permanent grade of first lieutenant or captain must be separated if he twice fails to be recommended for promotion to the next higher permanent grade. It has been long-standing procedure in the Army to promote officers to the permanent grades of captain and major at the so-called mandatory points required by law (i.e., 7 years of commissioned service to captain and 14 years of commissioned service to major).

When a reduction in force occurs, reserve officers in the grades below major can be discharged involuntarily at the discretion of the Secretary of the Army. However, this authority does not apply to regular officers.

MAJOR LEGISLATIVE PRECEDENTS

Although there have been several pieces of legislation enacted to alleviate post-war "humps" in the commissioned officer corps, most of them applied to officers in the grades of major, lieutenant colonel, and colonel. Only the following two acts applied to the grades below major:

1941: Public Law 190—Senate Joint Resolution 88—77th Congress

This resolution, applied only to the Army, was a temporary law designed to vitalize the active list of the Army by removal of any officer, based on his performance and efficiency. A board convened to select out officers for non-continuation. Those officers considered with only 7 years of service could be discharged while officers with more than 7 years were retired at the rate of 2½% of pay times their years of service.

The proposed legislation differs from Public Law 190 in that it would allow the separation of some officers with over 7 years of service with a readjustment payment.

1946: Public Law 305 of February 21, 1946—79th Congress

This temporary law affected all commissioned officer grades in the Navy, Marine Corps, and Coast Guard and authorized the retirement of officers excess to the needs of the services at the end of World War II. The officers to be retired were selected by a selection board and retired with retirement pay computed in the normal manner. The authority of the act was effective for the grades of colonel/captain and below.

NEED FOR THE BILL

The legislation would allow the Department of the Army to reduce the overall number of officers and the proportion of commissioned officers in the force while keeping the best quality officers regardless of their regular or reserve status. The committee believes the Army should reduce officer strengths concurrently with efforts to cut back headquarters and support activities but should use the authority in this legislation carefully and judiciously so as not to unfairly affect any individual or impair the morale of the junior officer corps.

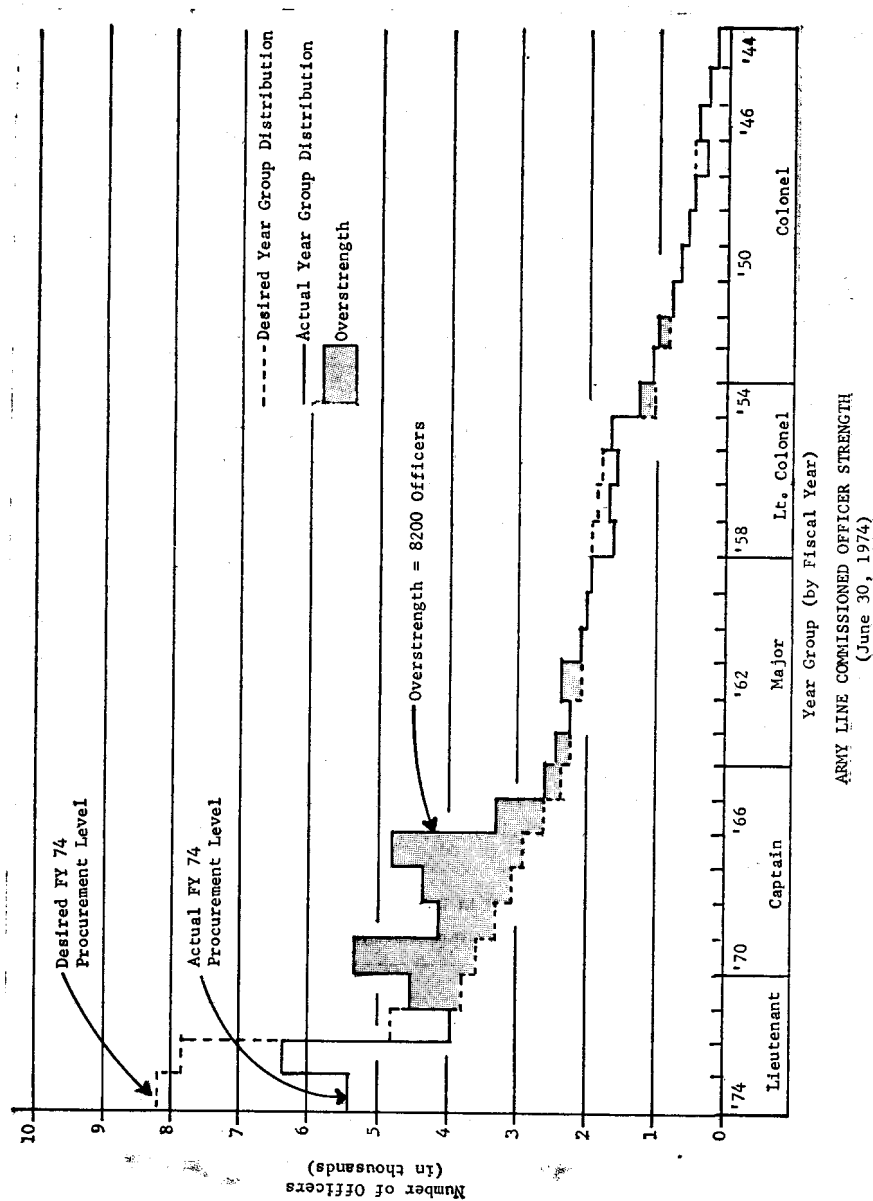
This legislation would provide the Army temporary authority to remove from the active list Regular Army officers below the grade of major without their consent in the event of a reduction in the active duty commissioned officer strength of the Army. Under existing law,

reserve officers are discharged when commissioned officer strength is reduced.

The following table compares the Army commissioned officer corps by grade and by regular and reserve status in Fiscal Years 1965 and 1974. An item worthy of note in this table is that much of the difference between the two end-strengths can be attributed to the decrease in the number of lieutenants. The Army attributes the decrease in the number of lieutenants to an inability to procure the desired number of officers in these grades.

ARMY COMMISSIONED OFFICER END-STRENGTHS BY TEMPORARY GRADE
(INCLUDES CIVIL WORKS AND RESERVE COMPONENTS)

	Fiscal year—	
	1965	1974
Generals.....	505	873
Colonels.....	5,205	5,173
Lieutenant colonels.....	12,434	11,480
Majors.....	17,193	17,734
Captains.....	30,032	31,936
1st lieutenants.....	16,609	12,005
2d lieutenants.....	19,834	13,064
Total.....	101,812	91,873



During the Vietnam war the increased procurement and rapid promotion of junior officers resulted in a "hump" of officers. The following chart shows this hump by contrasting the desired year group distribution of officers with the actual distribution. The chart also points out desired procurement levels and shows that the actual procurement level for FY 1974 is approximately one-half of the desired level.

To further illustrate the procurement problem, the following table shows a five-year history of the number of personnel entering the junior officer grades each year. Since the peak of Vietnam, procurement has fallen off, most noticeably in the junior officer corps.

ARMY JUNIOR OFFICER PROCUREMENT LEVELS BY GRADE

	Fiscal year—				
	1970	1971	1972	1973	1974
Captains.....	4,015	3,374	3,376	1,620	1,554
2d lieutenants.....	3,273	1,562	412	499	806
1st lieutenants.....	26,139	14,779	8,429	7,798	5,422
Total.....	33,427	19,715	12,217	9,917	7,782

Tracing promotion patterns shows the slowdown which has resulted from the rapid promotions during the Vietnam period. The following table contrasts the promotion rates at the peak of Vietnam to the present promotion rates in junior officers.

ARMY TEMPORARY PROMOTIONS

Promotion to—	Fiscal year 1969			Fiscal year 1974		
	Years of service	Selection rate ¹	Number promoted	Years of service	Selection rate ¹	Number promoted
Major.....	7.5	79	6,687	10.0	58	1,363
Captain.....	2.0	98	13,998	4.0	94	3,875
1st lieutenant.....	1.0	99	(²)	2.0	99	(²)

¹ Selection rate, first time considered.

² No central promotion board convened.

In the past five years, two reductions in force (RIFs) have been undertaken to alleviate the officer "hump". Only reserve officers were separated by this procedure. The following table shows the RIFs by temporary grade.

ARMY REDUCTIONS IN FORCE IN THE COMMISSIONED OFFICER CORPS

[Reserve officers only]

	Fiscal year—	
	1972	1974
Lieutenant Colonels.....	16	0
Majors.....	266	243
Captains.....	3,967	4,133
Lieutenants.....	152	524
Total.....	4,401	4,900

Comparing officer end-strengths for fiscal years 1965 through 1975 by component shows that while the regular officer corps has steadily increased the reserve corps has increased greatly and then been substantially reduced. The following table shows the net results of the changes.

ARMY COMMISSIONED OFFICER END-STRENGTHS BY GRADE AND COMPONENT

	Regular Army, fiscal year—		Other than regular Army, fiscal year—	
	1965	1974	1965	1974
Generals.....	498	474	7	7
Colonels.....	4,879	4,986	326	187
Lieutenant Colonels.....	8,205	9,762	4,229	1,718
Majors.....	9,350	11,084	7,843	6,650
Captains.....	12,678	13,041	17,354	18,895
1st Lieutenants.....	3,496	4,179	13,113	7,826
2d Lieutenants.....	2,637	5,256	17,197	7,808
Total.....	41,743	48,782	60,069	43,091

In order to get down to end-strengths imposed by the Secretary of Defense, the Army feels it will be necessary to have another reduction in force in Fiscal Year 1976. If the proposed legislation is passed, the planned reduction will be broken down between the regular and reserve officer corps. If the authority is not granted, the RIF will affect reserve officers only. No RIF is planned for Fiscal Year 1975.

ARMY PLANNED REDUCTION IN FORCE BY TEMPORARY GRADE, FISCAL YEAR 1976

	Regular Army	Other than Regular Army	Total
Majors.....	69	61	130
Captains.....	612	930	1,542
1st lieutenants.....	292	262	554
Total.....	973	1,253	2,226

By this planned reduction, the Army hopes to alleviate some of its procurement problems, maintain promotion patterns at their present level, and divide the burden of the force reduction between the reserve and the regular officer corps.

READJUSTMENT PAYMENTS

The readjustment payment provision of the legislation has been designed with the same provisions as that for reserve officers separated from active duty. An officer must have five years of service to be eligible for a readjustment payment. Any officer discharged with the five year minimum service will probably be a captain and would get approximately \$10,500 severance pay. At seven years of service, the same captain would receive the maximum of \$15,000 severance pay. Most of the officers who would be separated under this authority would be eligible for adjustment payments.

INVOLUNTARILY SEPARATED REGULAR OFFICERS AND RETENTION IN
THE RESERVES

Under current Army policy, reserve officers released from active duty are permitted to stay on in the Reserves in active or inactive status. It is anticipated that regular officers released from active duty under the authority in this legislation would be granted the same opportunity for continued service in the Reserves. This policy would maintain a comparable involuntary separation policy for both regular and reserve officers.

FISCAL DATA

The Department of the Army has stated that there would be no costs associated with this legislation since regular officers will be separated in the same manner as, and in lieu of, a like number of reserve officers and thus at the same cost to the government.

DEPARTMENTAL POSITION

The Department of the Army strongly recommends enactment of the legislation as indicated in the letter below and hereby made a part of this report.

DEPARTMENT OF THE ARMY,
Washington, D.C., November 29, 1973.

HON. JAMES O. EASTLAND,
President pro tempore, U.S. Senate.

DEAR MR. PRESIDENT: A draft of legislation "To amend title 10, United States Code, to provide that commissioned officers of the Army in regular grades below major may be involuntarily discharged whenever there is a reduction in force" is enclosed. This proposal is part of the Department of Defense Legislative Program for the 93rd Congress, and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Army has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by Congress.

PURPOSE OF LEGISLATION

The purpose of the proposed legislation is to permit the Secretary of the Army, or his designee, to convene boards which would be empowered to determine whether certain Regular Army second lieutenants, first lieutenants, and captains should be discharged during a period when the personnel strength of the Army is being reduced. Officers in the Army Reserve who are serving on active duty are subject to release from active duty during such periods (10 U.S.C. 1162). The bill would enable the Secretary of the Army to consider certain regular commissioned officers for continuation on active duty during such a reduction in a manner similar to that authorized for release of reserve officers during a reduction in force.

Under current Army policy, reserve officers released from active duty are permitted to remain in the Reserves in an active or inactive status. Under the bill, Regular Army officers would be discharged

from the Army. As Regular Army officers do not hold reserve commissions, this would effect their complete separation from the military. Generally, however, Regular Army officers who are discharged from the Regular Army are tendered reserve commissions. It is anticipated that regular officers who are not selected for continuation under this bill would be similarly treated and be given the opportunity to accept a reserve commission. This would enable the officers to continue their military service should they so desire, and, by permitting them to serve in the Reserve, would place them in the same position as their contemporaries in the Reserve who are released from active duty.

The Department of the Army considers the proposed legislation as providing a very useful career management tool for maintaining the high quality of the officer force. By using the authority granted him in the bill, the Secretary of the Army would be able to insure that those officers who remain on active duty during a time of a reduction in force will be those officers who have best demonstrated an ability to perform in a satisfactory and efficient manner. By enabling the Secretary of the Army to consider both regular officers and reserve officers at the same time, all officers affected by the reduction in force will be considered equally with their contemporaries without regard to their component. Thus, it will correct a situation which leads to certain inequities which are caused because Regular Army officers cannot be discharged during a reduction in force even though their records may be comparable to reserve officers who are released from active duty. Additionally, by enabling the Secretary to consider both regular and reserve officers for continuation on active duty, it will enable the Secretary to retain some reserve officers on active duty who might otherwise be released from active duty simply because their retention would cause an overage in authorized strength during a reduction in force.

A compensation formula has been included in the bill for officers who are not selected for continuation, but do not qualify for retirement. It provides for two months' basic pay for each year of service, with a \$15,000 or two-year basic pay maximum, whichever is lesser, that may be paid to any one officer. This compensation formula is similar to that which is applicable to reserve officers who have been selected for release from active duty during a reduction in force (10 U.S.C. 687). The bill also provides that its provisions would not be applicable to an officer who is required to be discharged because he has failed to be promoted to first lieutenant, captain, or major. It also provides that, in the case of members of the Medical, Dental, or Veterinary Corps, its provisions would not be applicable should they be found not to be qualified for promotion by a professional screening board. The provisions of the bill also would not be applicable to an officer who has been found disqualified for duty because of moral or professional dereliction of duty or whose continued service would not be in the interests of national security or an officer who is discharged during his three year probationary period. Because discharge of officers for moral or professional dereliction of duty, in the interests of national security, or during their probationary period is a matter within the discretion of the Secretary of the Army, the bill provides that failure to discharge an officer for those reasons would not preclude his discharge under the provisions of the bill. The proposed legislation would contain adequate protection for those regular officers who are within

two years of eligibility for retirement. Such protection parallels are currently enjoyed by reserve officers in a similar position (10 U.S.C. 1163(d)). Finally, the bill provides that it will be effective for only two years after enactment.

With the reduction of the overall commitment of the United States forces in Southeast Asia, the Army has been greatly reduced in strength. It is anticipated that these reductions will necessitate the additional involuntary release of officers in FY 75. The sizeable reduction the officer corps has already experienced during the past few years has been accomplished primarily through the involuntary separation of reserve component officers. To provide the necessary quality screening of the career force and to provide a measure of equity to the officer corps, it is desired that, if necessary, some of this additional reduction be allowed to come from the Regular Army component. The Department of the Army strongly urges that the bill be enacted.

COST AND BUDGET DATA

There are no cost implications from approval of this legislation. This would substitute the involuntary discharge of a regular officer in lieu of involuntary release of a reserve officer. Both would be entitled to the same readjustment payment.

Sincerely,

HOWARD H. CALLAWAY,
Secretary of the Army.

CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law proposed to be made by the bill are shown as follows: New matter is printed in italic, and existing law in which no change is proposed is shown in roman.

TITLE 10—UNITED STATES CODE ARMED FORCES

* * * * *

CHAPTER 361.—SEPARATION FOR VARIOUS REASONS

Sec. 3814. Regular commissioned officers: discharge during three year probationary period.

3814a. Regular commissioned officers; second lieutenants, first lieutenants, and captains; discharge during a reduction in force.

3818. Regular female members: termination of appointment or enlistment.

3819. Army Reserve officers: discharge for failure of promotion to first lieutenant.

3820. Army National Guard of United States officers: discharge.

* * * * *

§ 3814a. Regular commissioned officers; second lieutenants, first lieutenants, and captains; discharge during a reduction in force.

(a) Under regulations prescribed by the Secretary of the Army, whenever he determines that a reduction in the active duty officer personnel strength of the Army is required, he is authorized to remove from the active list of the Regular Army any commissioned officer below the grade of major, if such officer is recommended for removal from the active list by a board of officers appointed by the Secretary of the Army, or his designee, for the purpose of recommending the removal of officers from the active list.

(b) Any officer selected for removal from the active list of the Regular Army under subsection (a) shall—

(1) if he is eligible, and so requests, be retired under section 3911 of this title on the date requested by him and approved by the Secretary, but not later than 90 days after such officer receives notification that he is to be removed from the active list of the Regular Army;

(2) if he is not eligible for retirement under section 3911 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date requested by him and approved by the Secretary, but not later than 90 days after the date such officer receives notification that he is to be removed from the active list of the Regular Army; or

(3) if he is not eligible for retirement under section 3911 of this title or any other provision of law, or does not request retirement under section 3911 of this title or under any other provision of law if he is eligible, be honorably discharged on the date requested by him and approved by the Secretary, but not later than 90 days after the date such officer receives notification that he is to be removed from the active list of the Regular Army, and be granted a readjustment payment as provided in subsection (c) of this section.

(c) (1) Any officer discharged under subsection (b)(3) and who has completed, immediately before his discharge, at least five years of continuous active duty is entitled to a readjustment payment computed by multiplying his years of active service, but not more than eighteen, by two months' basic pay of the grade in which he is serving on the date of his discharge. Such an officer may not be paid more than two years' basic pay of the grade in which he is serving at the time of his discharge or \$15,000, whichever amount is the lesser.

(2) For the purpose of computing the amount of a readjustment payment under subsection (b)(3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(d) If any officer who received a readjustment payment under this section qualifies for retired pay under any provision of this title or title 14 that authorizes his retirement upon completion of twenty years of active service, an amount equal to 75 per centum of that payment, without interest, shall be deducted immediately from his retired pay.

(e) This section does not apply to any officer who is required to be discharged or retired for failure of promotion to the grade of first lieutenant, captain, or major under section 3298 or 3303, as appropriate, or who is found to be disqualified for promotion under section 3302 of this title.

(f) When, under regulations prescribed by the Secretary, any officer has been recommended for removal from the active list of the Regular Army under chapter 359 or 360 of this title, and that recommendation has been received by Headquarters, Department of the Army, or when, under regulations prescribed by the Secretary, any officer has been selected by Headquarters, Department of the Army, for discharge under section 3814 of this title, such officer may not be considered for removal from the active list under this section. However, any action by any headquarters subordinate to Headquarters, Department of the Army, with respect to proceedings for the consideration of any officer for discharge under chapter 359 or 360 or section 3814 of this title shall not prevent consideration for removal of such officer from the active list under this section. Further, the removal of any officer from the active list under this section is not prevented if such officer was previously considered for discharge under chapter 359 or 360 of this title and was recommended for retention under such provision of law or if such officer was recommended for discharge under section 3814 but was not discharged under authority of such section.

(g) Under regulations prescribed by the Secretary, any regular officer who is within two years of becoming eligible for retired pay may not be involuntarily discharged under this section before he becomes eligible for that pay, unless his discharge is approved by the Secretary.

SEC. 2. This Act is effective on the date of enactment and expires three years after that date.



AMENDING TITLE 10, UNITED STATES CODE, TO PROVIDE AUTHORITY FOR THE ARMY FOR A 3-YEAR PERIOD TO INVOLUNTARILY DISCHARGE REGULAR COMMISSIONED OFFICERS IN GRADES BELOW MAJOR WHENEVER THERE IS A REDUCTION IN FORCE

DECEMBER 10, 1974.—Ordered to be printed

Mr. STRATTON, from the Committee on Armed Services,
submitted the following

REPORT

[To accompany S. 3191]

The Committee on Armed Services, to whom was referred the bill (S. 3191) to amend title 10, United States Code, to provide that commissioned officers of the Army in regular grades below major may be involuntarily discharged whenever there is a reduction in force, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 3191 is to authorize the Department of the Army to discharge involuntarily Regular officers in grades below major when there is a reduction in force during the three-year period following enactment of the legislation.

EXPLANATION OF THE BILL

The Army has had to conduct several reductions in force to reduce the size of the officer corps in connection with the reduction in strength which has taken place within the Army since the height of the Vietnam War. In fiscal year 1972 and again in fiscal year 1974 some 10,000 Reserve officers were forced off active duty during reductions in force.

The Army plans to reduce its officer strength further in fiscal year 1976 from the 102,500 officers it will have at the end of fiscal year 1975 to approximately 98,100 officers, a total reduction of 4,400. While normal attrition will account for some reductions, it is anticipated that involuntary release of approximately 2,500 officers will be necessary to achieve the desired strength reduction. Present law prohibits the involuntary release of Regular officers short of completion of a

set number of years of service except for specific reasons. A Regular officer holding the grade of captain or below can be separated only by reason of promotion failure; court martial; show-cause proceedings; or, if he is in a probationary status—that is, less than three years of active commissioned service in the Regular Army—at the discretion of the Secretary of the Army. An officer holding the permanent grade of first lieutenant or captain must be separated if he twice fails of selection for permanent promotion to the next higher grade. However, permanent promotion to captain occurs in the Army at the completion of seven years of commissioned service and permanent promotion to major at the completion of fourteen years of commissioned service.

The Army, in its reduction in force, will seek to reduce the number of officers in year groups in which it has overages, which are the groups of officers commissioned in the years 1966 through 1970. In almost all cases the officers to be removed from active duty would be in the grade of captain. Temporary promotion to captain normally occurs at the fourth year of service. Since the Army would not be able to eliminate Regular captains until their fourteenth year of service under present law, legislation is required to prevent the reduction in force from being applied entirely against Reserve officers. (Reserve officers in grades below major can be discharged involuntarily at the discretion of the Secretary of the Army under present law.)

COMPARATIVE POTENTIAL OF ACTIVE-DUTY RESERVE CAPTAINS

Because of the heavy reductions in force in fiscal year 1972 and again in fiscal year 1974, the Reserve officers remaining on active duty in the grade of captain have been screened carefully several times and have survived a demanding selection process. A comparison of the records of these remaining reservists reveals that many of them have greater potential than some of their Regular contemporaries. Therefore, to provide equity to these Reserve officers in the affected year groups and at the same time ensure the retention of the best potential officers regardless of component for the Army, it has been determined that any additional reduction in force should be applied to both Regulars and Reserves. Any other approach would be unfair to individual reservists and would not be in the best interest of the Army.

READJUSTMENT PAY

A Regular officer involuntarily discharged under this legislation would receive readjustment pay according to the same formula under which readjustment pay is provided to released Reserve officers; that is, two months' basic pay of the grade in which he is serving at discharge times the number of years of his active service, subject to a maximum of \$15,000.

Such readjustment pay is paid to officers who have between five and eighteen years of continuous service. Officers with more than eighteen years of service must be retained until completion of twenty years and achievement of eligibility for retirement.

Under the legislation the Secretary of the Army would be authorized to convene a board of officers to recommend officers for separation.

Those selected for involuntary discharge would, not later than ninety days following notification, be honorably discharged or, if so eligible, be retired.

It is contemplated that, to the maximum extent possible, Regular officers so released would be offered an opportunity to serve in a non-active duty status in selected Reserve billets.

The proposed legislation excludes the following categories of officers:

(1) officers holding the Regular grade of first lieutenant or captain who are awaiting separation for having twice failed of selection to the permanent grade of captain and major, respectively;

(2) officers holding the permanent grade of second lieutenant who are awaiting separation for failure of selection to the permanent grade of first lieutenant;

(3) officers recommended for separation as the result of show-cause proceedings (substandard duty performance, moral or professional dereliction of duty, or in the interests of national security); or

(4) probationary officers (i.e., officers with less than three years of active commissioned service in the Regular Army) selected for discharge under the discretionary authority of the Secretary of the Army.

The bill does not place a numerical limitation on the number of officers that may be separated involuntarily, but the authority provided by the bill would expire three years after the effective date, which is the date of enactment.

FISCAL DATA

There will be no increase in the budgetary requirements of the Department of the Army as a result of enactment of this legislation. Regular officers separated under the legislation would be separated in the same manner and in place of a like number of Reserve officers. The cost to the government in readjustment pay, therefore, would be the same.

DEPARTMENTAL DATA

The bill is a legislative request of the Department of the Army, which strongly urges its enactment, as is indicated in the following letter which is hereby made a part of this report:

DEPARTMENT OF THE ARMY,
Washington, D.C., November 29, 1973.

HON. CARL ALBERT,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: A draft of legislation "To amend title 10, United States Code, to provide that commissioned officers of the Army in regular grades below major may be involuntarily discharged whenever there is a reduction in force" is enclosed. This proposal is part of the Department of Defense Legislative Program for the 93rd Congress, and the Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this proposal for the consideration of the Congress. The Department of the Army has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by Congress.

PURPOSE OF LEGISLATION

The purpose of the proposed legislation is to permit the Secretary of the Army, or his designee, to convene boards which would be empowered to determine whether certain Regular Army second lieutenants, first lieutenants, and captains should be discharged during a period when the personnel strength of the Army is being reduced. Officers in the Army Reserve who are serving on active duty are subject to release from active duty during such periods (10 U.S.C. 1162). The bill would enable the Secretary of the Army to consider certain regular commissioned officers for continuation on active duty during such a reduction in a manner similar to that authorized for release of reserve officers during a reduction in force.

Under current Army policy, reserve officers released from active duty are permitted to remain in the Reserves in an active or inactive status. Under the bill, Regular Army officers would be discharged from the Army. As Regular Army officers do not hold reserve commissions, this would effect their complete separation from the military. Generally, however, Regular Army officers who are discharged from the Regular Army are tendered reserve commissions. It is anticipated that regular officers who are not selected for continuation under this bill would be similarly treated and be given the opportunity to accept a reserve commission. This would enable the officers to continue their military service should they so desire, and, by permitting them to serve in the Reserve, would place them in the same position as their contemporaries in the Reserve who are released from active duty.

The Department of the Army considers the proposed legislation as providing a very useful career management tool for maintaining the high quality of the officer force. By using the authority granted him in the bill, the Secretary of the Army would be able to insure that those officers who remain on active duty during a time of a reduction in force will be those officers who have best demonstrated an ability to perform in a satisfactory and efficient manner. By enabling the Secretary of the Army to consider both regular officers and reserve officers at the same time, all officers affected by the reduction in force will be considered equally with their contemporaries without regard to their component. Thus, it will correct a situation which leads to certain inequities which are caused because Regular Army officers cannot be discharged during a reduction in force even though their records may be comparable to reserve officers who are released from active duty. Additionally, by enabling the Secretary to consider both regular and reserve officers for continuation on active duty, it will enable the Secretary to retain some reserve officers on active duty who might otherwise be released from active duty simply because their retention would cause an overage in authorized strength during a reduction in force.

A compensation formula has been included in the bill for officers who are not selected for continuation, but do not qualify for retirement. It provides for two months' basic pay for each year of service, with a \$15,000 or two-year basic pay maximum, whichever is lesser,

that may be paid to any one officer. This compensation formula is similar to that which is applicable to reserve officers who have been selected for release from active duty during a reduction in force (10 U.S.C. 687). The bill also provides that its provisions would not be applicable to an officer who is required to be discharged because he has failed to be promoted to first lieutenant, captain, or major. It also provides that, in the case of members of the Medical, Dental, or Veterinary Corps, its provisions would not be applicable should they be found not to be qualified for promotion by a professional screening board. The provisions of the bill also would not be applicable to an officer who has been found disqualified for duty because of moral or professional dereliction of duty or whose continued service would not be in the interests of national security or an officer who is discharged during his three year probationary period. Because discharge of officers for moral or professional dereliction of duty, in the interests of national security, or during their probationary period is a matter within the discretion of the Secretary of the Army, the bill provides that failure to discharge an officer for those reasons would not preclude his discharge under the provisions of the bill. The proposed legislation would contain adequate protection for those regular officers who are within two years of eligibility for retirement. Such protection parallels are currently enjoyed by reserve officers in a similar position (10 U.S.C. 1163 (d)). Finally, the bill provides that it will be effective for only two years after enactment.

With the reduction of the overall commitment of the United States forces in Southeast Asia, the Army has been greatly reduced in strength. It is anticipated that these reductions will necessitate the additional involuntary release of officers in FY 75. The sizeable reduction the officer corps has already experienced during the past few years has been accomplished primarily through the involuntary separation of reserve component officers. To provide the necessary quality screening of the career force and to provide a measure of equity to the officer corps, it is desired that, if necessary, some of this additional reduction be allowed to come from the Regular Army component. The Department of the Army strongly urges that the bill be enacted.

COST AND BUDGET DATA

There are no cost implications from approval of this legislation. This would substitute the involuntary discharge of a regular officer in lieu of involuntary release of a reserve officer. Both would be entitled to the same readjustment payment.

Sincerely,

(Signed) HOWARD H. CALLAWAY,
Secretary of the Army.

COMMITTEE POSITION

The Committee on Armed Services, on December 10, 1974, a quorum being present, approved S. 3191, without objection, and recommends its enactment.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives there is printed below in parallel columns the text of the provisions of existing law which would be amended by the provisions of the bill as reported.

EXISTING LAW

TITLE 10—UNITED STATES CODE ARMED FORCES

CHAPTER 361.—SEPARATION FOR VARIOUS REASONS

- Sec.
3814. Regular commissioned officers: discharge during three-year probationary period.
3918. Regular female members: termination of appointment or enlistment.
3819. Army Reserve officers: discharge for failure of promotion to first lieutenant.
3820. Army National Guard of United States officers: discharge.

THE BILL AS REPORTED

TITLE 10—UNITED STATES CODE ARMED FORCES

CHAPTER 361.—SEPARATION FOR VARIOUS REASONS

- Sec.
3814. Regular commissioned officers: discharge during three-year probationary period.
3814a. Regular commissioned officers; second lieutenants, first lieutenants, and captains; discharge during a reduction in force.
3818. Regular female members: termination of appointment or enlistment.
3819. Army Reserve officers: discharge for failure of promotion to first lieutenant.
3820. Army National Guard of United States officers: discharge.

3814a. Regular commissioned officers; second lieutenants, first lieutenants, and captains; discharge during a reduction in force.

(a) Under regulations prescribed by the Secretary of the Army, whenever he determines that a reduction in the active duty officer personnel strength of the Army is required, he is authorized to remove from the active list of the Regular Army any commissioned officer below the grade of major, if such officer is recommended for removal from the active list by a Board of officers appointed by the

Secretary of the Army, or his designee, for the purpose of recommending the removal of officers from the active list.

(b) Any officer selected for removal from the active list of the Regular Army under subsection (a) shall—

(1) if he is eligible, and so requests, be retired under section 3911 of this title on the date requested by him and approved by the Secretary, but not later than 90 days after such officer receives notification that he is to be removed from the active list of the Regular Army; or

(2) if he is not eligible for retirement under section 3911 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date requested by him and approved by the Secretary, but not later than 90 days after the date such officer receives notification that he is to be removed from the active list of the Regular Army; or

(3) if he is not eligible for retirement under section 3911 of this title or any other provision of law, or does not request retirement under section 3911 of this title or under any other provision of law if he is eligible, be honorably discharged on the date requested by him and approved by the Secretary, but not later than 90 days after the date such officer receives notification that he is to be removed from the active list of the Regular Army, and be granted a readjustment payment as provided in subsection (c) of this section.

(c) (1) Any officer discharged under subsection (b) (3) and who has completed, immediately before his discharge, at least five years of continuous active duty is entitled to a readjustment payment computed by multiplying his years of active service, but not more than eighteen, by two months' basic pay of the grade in which he is serving on the date of his discharge. Such an officer may not be paid more than two years' basic pay of the grade in which he is serving at the time of his discharge or \$15,000, whichever amount is the lesser.

(2) For the purpose of computing the amount of a readjustment payment under subsection (b) (3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(d) If any officer who received a readjustment payment under this section qualifies for retired pay under any provision of this title or title 14 that authorizes his retirement upon completion of twenty years of active service, an amount equal to 75 per centum of that payment, without interest, shall be deducted immediately from his retired pay.

(e) This section does not apply to any officer who is required to be discharged or retired for failure of promotion to the grade of first lieutenant, captain, or major under section 3298 or 3303, as appropriate, or who is found to be disqualified for promotion under section 3302 of this title.

(f) When, under regulations prescribed by the Secretary, any officer has been recommended for removal from the active list of the Regular Army under chapter 359 or 360 of this title, and that recommendation has been received by Headquarters, Department of the Army, or when, under regulations prescribed by the Secretary, any officer has been selected by Headquarters, Department of the Army, for discharge under section 3814 of this title, such officer may not be considered for removal from the active list under this section. However, any action by any headquarters subordinate to Headquarters, Department of the Army, with respect to proceedings for the consideration of any officer for discharge under Chapter 359 or 360 or section 3814 of this title shall not prevent consideration for removal of such officer from the active list under this section. Further, the removal of any officer from the active list under this section is not prevented if such officer was previously considered for discharge under chapter 359 or 360 of this title and was recommended for retention under such provision of law or if such officer was recommended for discharge under section 3814 but was not discharged under authority of such section.

(g) Under regulations prescribed by the Secretary, any regular officer who is within two years of becoming eligible for retired pay may not be involuntarily discharged under this section before he becomes eligible for that pay, unless his discharge is approved by the Secretary.

SEC. 2. This Act is effective on the date of enactment and expires three years after that date.

SUMMARY

PURPOSE

The purpose of the bill is to authorize the Secretary of the Army to discharge involuntarily Regular officers in grades below major whenever there is a reduction in force during the three-year period of the legislation.

FISCAL DATA

There will be no increase in budgetary requirements of the Department of the Army as a result of enactment of this bill.

DEPARTMENTAL POSITION

S. 3191 embodies a legislative proposal of the Department of the Army.

COMMITTEE POSITION

The Committee on Armed Services, on December 10, 1974, a quorum being present, approved S. 3191, without objection, and recommends its enactment.





Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To amend title 10, United States Code, to provide that commissioned officers of the Army in regular grades below major may be involuntarily discharged whenever there is a reduction in force.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 361 of title 10, United States Code, is amended by inserting the following new section after section 3814, and inserting a corresponding new item in the chapter analysis:

“§ 3814a. Regular commissioned officers; second lieutenants, first lieutenants, and captains; discharge during a reduction in force

“(a) Under regulations prescribed by the Secretary of the Army, whenever he determines that a reduction in the active duty officer personnel strength of the Army is required, he is authorized to remove from the active list of the Regular Army any commissioned officer below the grade of major, if such officer is recommended for removal from the active list by a board of officers appointed by the Secretary of the Army, or his designee, for the purpose of recommending the removal of officers from the active list.

“(b) Any officer selected for removal from the active list of the Regular Army under subsection (a) shall—

“(1) if he is eligible, and so requests, be retired under section 3911 of this title on the date requested by him and approved by the Secretary, but not later than ninety days after such officer receives notification that he is to be removed from the active list of the Regular Army;

“(2) if he is not eligible for retirement under section 3911 of this title, but is eligible for retirement under any other provision of law, be retired under that law on the date requested by him and approved by the Secretary, but not later than ninety days after the date such officer receives notification that he is to be removed from the active list of the Regular Army; or

“(3) if he is not eligible for retirement under section 3911 of this title or any other provision of law, or does not request retirement under section 3911 of this title or under any other provision of law if he is eligible, be honorably discharged on the date requested by him and approved by the Secretary, but not later than ninety days after the date such officer receives notification that he is to be removed from the active list of the Regular Army, and be granted a readjustment payment as provided in subsection (c) of this section.

“(c) (1) Any officer discharged under subsection (b) (3) and who has completed, immediately before his discharge, at least five years of continuous active duty is entitled to a readjustment payment computed by multiplying his years of active service, but not more than eighteen, by two months' basic pay of the grade in which he is serving on the date of his discharge. Such an officer may not be paid more than two years' basic pay of the grade in which he is serving at the time of his discharge or \$15,000, whichever amount is the lesser.

“(2) For the purpose of computing the amount of a readjustment payment under subsection (b) (3), a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

“(d) If any officer who received a readjustment payment under this section qualifies for retired pay under any provision of this title or title 14 that authorizes his retirement upon completion of twenty years of active service, an amount equal to 75 per centum of that payment, without interest, shall be deducted immediately from his retired pay.

“(e) This section does not apply to any officer who is required to be discharged or retired for failure of promotion to the grade of first lieutenant, captain, or major under section 3298 or 3303, as appropriate, or who is found to be disqualified for promotion under section 3302 of this title.

“(f) When, under regulations prescribed by the Secretary, any officer has been recommended for removal from the active list of the Regular Army under chapter 359 or 360 of this title, and that recommendation has been received by headquarters, Department of the Army, or when, under regulations prescribed by the Secretary, any officer has been selected by headquarters, Department of the Army, for discharge under section 3814 of this title, such officer may not be considered for removal from the active list under this section. However, any action by any headquarters subordinate to headquarters, Department of the Army, with respect to proceedings for the consideration of any officer for discharge under chapter 359 or 360 or section 3814 of this title shall not prevent consideration for removal of such officer from the active list under this section. Further, the removal of any officer from the active list under this section is not prevented if such officer was previously considered for discharge under chapter 359 or 360 of this title and was recommended for retention under such provision of law or if such officer was recommended for discharge under section 3814 but was not discharged under authority of such section.

“(g) Under regulations prescribed by the Secretary, any regular officer who is within two years of becoming eligible for retired pay may not be involuntarily discharged under this section before he becomes eligible for that pay, unless his discharge is approved by the Secretary.”

SEC. 2. This Act is effective on the date of enactment and expires three years after that date.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

December 18, 1974

Dear Mr. Director:

The following bills were received at the White House on December 18th:

H.J. Res. 224 ✓	S. 3191 ✓
S.J. Res. 260 ✓	S. 4013 ✓
S. 425 ✓	H.R. 7978 ✓
S. 939 ✓	H.R. 8193 ✓
S. 2343 ✓	H.R. 8864 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.