

VETERAN STATUS – TITLE 38 USC 101 and 4212; Title 5 USC 2018

ROA urges Congress to update Title 5 and Title 38 provisions to make technical corrections to the definitions of veteran status reflective of Title 10.

After the end of the Korean War, the reserve component (RC) came to be considered the “strategic reserve”, which was intended for its primary role in major conflicts. Only 37,643 RC members were called up for the Vietnam War. The transformation from the strategic reserve to the operational reserve began in August 1990, when Saddam Hussein’s Iraq forces invaded and occupied Kuwait and threatened Saudi Arabia. In response, 238,729 RC members were called-up for Operation Desert Shield and Operation Desert Storm.

The transformation from strategic to operational reserve was deepened after the terrorist attacks of September 11, 2001. Since then more than 900,000 RC members have supported Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn

The relevant provisions of Title 5 (Government Organization and Employees) and Title 38 (Veterans Benefits) of the United States Code were drafted and enacted during the strategic reserve era. Important benefits are limited to those who serve in “*active* military, naval, or air service”. These laws seem to draw a distinction between persons who serve in the *active* component (AC) and those who serve in the *reserve* component (RC), thereby creating a class distinction.

Persons who serve in the RC are frequently treated as second-class citizens. The presumption is that their service is limited to “one weekend per month and two weeks in the summer.” This presumption was never entirely accurate or fair, and it is certainly inaccurate and unfair in the U.S. military after September 11, 2001.

1. Qualifying as a veteran for title 38 purposes generally

ROA supports updating Title 38 USC 101(24) to reflect Title 10, USC 101(d)(1) and (3).

ROA proposes that section 101(21) and (24) of Title 38 be amended to read as follows:

(21) The term “active duty” means—

(A) full-time duty in the active military service of the United States. Such term includes 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. Such term does not include full-time National Guard duty.

(24) The term "active military, naval, or air service" includes--

- (A) active duty;
- (B) any period of Reserve or Guard active duty;
- (C) any period of inactive duty training from which the individual concerned became disabled, died or
 - (i) from an injury, illness, contamination, exposure or other event incurred or aggravated in line of duty; or
 - (ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

2. Qualifying as a veteran for purposes of affirmative action in employment by federal contractors

ROA proposes to amend Title 38 USC 4212(a)(3) by adding a new subsection (v). This would provide companies with an expanded population of Guard and Reserve servicemembers to meet the requirements of the law for hiring purposes.

"(v) Persons who are currently serving as members of Reserve Components of the armed forces."

3. Qualifying for veterans' preference in federal employment

The nature of Reserve Component duty is such that the Reserve Component member often will serve fewer than 180 days at once. This change ensures the Guard and Reserve meets the 180-day requirement of the law but recognizes that Reserve Component servicemembers come on and off orders to meet the needs of the service and should not be penalized for the nature of the way they meet this need. In being available for short periods of time the Reserve Component servicemember is demonstrating the flexibility necessary to achieve national security.

ROA proposes to amend 5 USC. 2018, (1)(B) and (1)(D) to change "consecutive" to "cumulative" in each of the places where the word "consecutive" appears.