

# LAW REVIEW 15008<sup>1</sup>

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## **Congress Fixes the Fiscal Year Barrier Problem, but the Fix Is not Retroactive**

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9.0--Miscellaneous

**Q: I am a Lieutenant Colonel in the Army Reserve and a life member of the Reserve Officers Association (ROA). I read with great interest your “Law Review” articles and especially Law Review 1007 (January 2010), about the 2008 amendment to section 12731 of title 10, to permit Reserve Component members like myself to start drawing Reserve retirement benefits a few months prior to our 60<sup>th</sup> birthdays, under some circumstances.**

**I was on active duty for 160 consecutive days in late 2011, and I spent most of that time in Afghanistan. I was on active duty for the last 81 days of Fiscal Year 2011 (which ended September 30, 2011) and the first 79 days of Fiscal Year 2012 (which began on October 1, 2011). I figured that this should at least get me a three-month reduction (from age 60 to age 59.75) in when I start drawing my Reserve retirement pay, but I have been told that this 160-day period does not reduce my retirement pay eligibility age by one day because I did not have at least 90 days of service *in any one fiscal year*.**

**I think that I have been treated unfairly, and I do not believe that Congress intended to exclude a person like me from this valuable benefit, based on the random circumstance that my active duty period happened to overlap fiscal years. When a reservist is called to active duty, the call is based on need, not on artificial date barriers.**

**Is it necessary to get Congress to amend the statute to fix this problem? Has there been any progress on getting Congress to enact such a fix?**

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<sup>1</sup> We invite the reader’s attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find more than 1,300 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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**A:** Yes, Congress has fixed this problem, but the fix is not retroactive and does not help you with respect to your 160-day active duty period in late 2011. As is explained in Law Review 1007, Congress amended section 12731(f)(2)(A) on January 28, 2008, to read as follows:

“In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 [Jan. 28, 2008], the eligibility age for purposes of subsection (a)(1) shall be reduced below 60 years of age by three months for each aggregate of 90 days on which such person so performs *in any fiscal year* after such date, subject to subparagraph (C). A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.”

10 U.S.C. 12731(f)(2)(A) (emphasis supplied).

On December 19, 2014, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2015, Public Law 113-291. Section 625 of this new law amends section 12731(f)(2)(A) to read as follows:

“In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2008 [Jan. 28, 2008], the eligibility age for purposes of subsection (a)(1) shall be reduced below 60 years of age by three months for each aggregate of 90 days on which such person *serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two fiscal years after September 30, 2014*. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.”

10 U.S.C. 12731(f)(2)(A).

The purpose and effect of this very recent amendment is to solve the fiscal year barrier problem, *but only prospectively*. The new rule, giving a three-month reduction for 90 days of qualifying active duty without regard to the end of a fiscal year, only applies to Fiscal Year 2015 (which began on October 1, 2014) and thereafter. This new rule does not apply to your 160-day active duty period in late 2011.

Here at ROA, we are hard at work every day looking out for the interests of our members and Reserve Component service members in general. We don't always succeed, and when we do succeed Congress very often makes the new fairer rule apply prospectively only to reduce the cost of implementing the benefit. This is very hard work, and we need the help of Reserve Component service members, by joining ROA and remaining members, by financial contributions to ROA, and by contacting your own United States Senators and Representatives on behalf of our legislative efforts.