

**2-8. Persons ineligible for Federal recognition and waivers not authorized**

- a.** Subversive or disloyal persons;
- b.** Persons against whom proceedings have been initiated under AR 604-10 and whose cases have not been concluded in their favor;
- c.** Applicants who refuse to completely answer any pertinent question in the course of an official investigation, interrogation, or examination conducted, for the purpose of ascertaining the existence or extent, or both, of conduct described in AR 380-67;
- d.** Applicants who are serving a period of probation resulting from conviction by any type of military or civil court;
- e.** Persons who are presently conscientious objectors;
- f.** Persons dropped from the rolls, released from AD, or separated from any component of the U.S. Armed Forces for any of the following reasons:
  - (1) Under other than honorable conditions;
  - (2) For unsatisfactory service;
  - (3) Resignation in lieu of court-martial, elimination for any form of corrective or disciplinary action, or for the good of the service;
  - (4) Reserve commissioned officers or warrant officers of the U.S. Armed Forces twice nonselected for promotion by a Reserve selection board convened by the Secretary concerned;
  - (5) As a security risk or for other than security reasons while undergoing a security investigation IAW AR 380-67 or AR 604-10; and
  - (6) Any individual regardless of prior U.S. military service component that was not retained through a qualitative management program to include Reserve Component Selective Retention Boards.
- g.** Persons on an active or retired list of the Armed Forces other than the U.S. Army (members on active or retired list of the Active Components of the Navy, Air Force, Marine Corps, and Coast Guard);
- h.** Individuals denied retired pay or annuities under the Hiss Act (Title 5, USC, section 8312);
- i.** Applicants who are in the military service of a foreign government or who are employed by a foreign government;
- j.** Persons on the retired list of the U.S. Army.
  - (1) Regular Army officers unless appointed to general officer grade in the ARNG of a State with assignment as State Adjutant General or Assistant Adjutant General.
  - (2) Reserve officers who are members of the Retired Reserve and who are eligible for or have been retired under Title 10 USC, section 1293, unless prior approval has been granted by the Secretary of the Army IAW AR 140-10.

(3) Enlisted personnel retired under Title 10, USC, section 3914;

**k.** Except in the case of State adjutants general, commissioned officers of the U.S. Armed Forces separated by reason of length of service, time in grade, or age from:

- (1) Active duty (members of Active Components).
- (2) Active status (members of Reserve Components).

**l.** Commissioned officers, warrant officers, and enlisted soldiers separated from any component of the Armed Forces by elimination procedures of a derogatory nature similar to those contained in AR 635-100 or AR 635-200; and

**m.** Former Regular Army officers who have been denied appointment in the U.S. Army Reserve IAW AR 135-100.

**2-9. Persons ineligible for Federal recognition unless waiver is granted**

**a. Former conscientious objectors.** A former conscientious objector will be required to furnish an affidavit expressing abandonment of such beliefs so far as it pertains to an unwillingness to bear arms, and to give full and unqualified military service to the United States. Waiver authority is CNGB. Requests will be forwarded to NGB-ARP-CO.

**b. Applicants with a record of prior convictions.** Waiver authority is CNGB. Requests will be forwarded to NGB-ARP-CO.

(1) Individuals who have been adjudged youthful offenders or have a record of convictions of any type of military or civil court, excluding minor traffic violations involving a fine or forfeiture of \$300 or less;

(2) Conviction of a felony under local, Federal, or military law;

(3) Conviction that resulted in sentence to confinement in prison, stockade, or detention area or in sentence to hard labor; and

(4) Conviction involving moral turpitude.

**c. Persons previously discharged for dependency or hardship.** A person previously discharged from any of the Armed Forces of the United States for hardship or dependency may not be accepted for appointment, unless it has been determined by investigation conducted by the unit commander that the reasons for discharge no longer exist. A copy of the applicant's affidavit, giving reasons for discharge, how they have been overcome, and that applicant will be available in the event of an emergency, will be included in the request for waiver. Waiver authority is delegated to State adjutants general.

**d. Applicants previously separated.** Applicants who were previously separated from any component of the Army because of failure to complete any required military education or course within the time frame prescribed. Waivers for the basic branch course may be considered only if the school commandant or

faculty board authorizes the failure to be resolved by completion of nonresident courses or reenrollment in a resident program. Waiver authority is CNGB. Requests will be forwarded to NGB-ARP-CO.

**e. Applicants unable to complete 20 years.** Applicants unable to complete 20 years of creditable service for retirement or retired pay prior to mandatory removal from an active status as prescribed in NGR 635-100. Waiver may be considered upon demonstration that an applicant possesses truly outstanding qualifications. Waiver authority is delegated to State adjutants general. Applicant must sign a statement, which becomes a permanent part of his/her record, stating that he/she understands that he/she will not be able to complete twenty years of creditable service for retirement prior to reaching his/her mandatory removal date.

**f. ROTC graduates.** ROTC graduates who are required to complete two years or more of active duty upon completion of baccalaureate or higher degree requirements may not be appointed unless entry on active duty is delayed for 12 months or more. Waiver authority is delegated to the State adjutants general.

#### 2-10. Waiver

**a.** All requests for waiver which require a decision by the CNGB or higher authority will be forwarded through The Adjutant General to the approving authority as indicated below. A copy of the approved waiver, as determined by either the CNGB or The Adjutant General, will be included as an enclosure to the appointment application.

**b.** Decisions on all personnel actions considered under this chapter will be made after a complete review of the entire record of each individual case. The unit commander's recommendation must include favorable evidence of individual's military and civilian education, character, civilian employment status, and financial responsibility. Discriminators, such as a record of indebtedness, questionable character traits, nonjudicial punishment, history of problems with civilian employment, and lack of substantive support by the chain of command will lessen the chances for approval.

**c.** Applicants requiring waivers will not be permitted to appear before an FRB prior to waiver approval.

**d.** Waiver of disqualifications other than those authorized in paragraph 2-9 and this paragraph may only be granted by the Secretary of the Army or his designee. Waiver requests will, among other factors, be based on recommendation of the CNGB through HQDA, DCSPER. Requests for waiver will be submitted through command channels. The waiver must be justified fully as being in the best interest of the Army. The waiver request must also clearly state with supporting documentation that the experience or professional qualifications of the individual uniquely suit the position to which appointment is requested.

**e.** Waiver requests for prior convictions will be considered only if the applicant's conduct and character at present time are above reproach, and the potential value of the applicant's service as an officer is considered to be very high. Requests must be supported by NGB Form 62, official court documents citing the offense, court action, and judgment rendered and will include a statement of circumstances from the applicant and should be submitted to NGB-ARP-CO.

**f.** Requests for medical waivers should be submitted with all supporting documents to NGB-ARP-HS.

**g.** Requests for age waivers should be submitted with all supporting documents to NGB-ARP-CO.

**h.** Requests for civilian education and military education waivers will be submitted with supporting documentation to NGB-ARP-PO.

**i.** All requests for predetermination and all requests for waiver will contain documents normally provided to the FRB. In addition to those documents listed in the paragraphs above and **appendix B** of this regulation, the application will contain records of prior military service. As a minimum, copies of enlisted and/or officer evaluation reports, performance qualification records (e.g., DA Form 2-1), and academic evaluations from service schools must be included.

#### 2-11. Procurement sources

Individuals will be selected from the following sources:

**a.** U.S. Army Reserve (USAR) commissioned officers and former commissioned officers of any component of the U.S. Army and U.S. Marine Corps (USMC). U.S. Army Reserve commissioned officers and former commissioned officers with previous honorable and creditable service in any component of the U.S. Army or USMC who have demonstrated their qualifications by service in the grade requested.

**b. Holders of Certificates of Eligibility.** Individuals who have a Certificate of Eligibility (NGB Form 89a), as provided in paragraph 2-12 below, may be appointed to the grade and branch for which qualified as stated in the certificate, provided all current appointment criteria are met at the time of appointment.

**c. Graduates of accredited officer candidate schools (OCS).** Graduates of an accredited OCS, including those of the other services, may be appointed in the grade of second lieutenant. Graduates who are not qualified for appointment at the time of graduation have two years from the date of the OCS completion certificate to become qualified and receive Federal recognition or become ineligible for appointment.

**d. Applicants for assignment to aviator positions.** Applicants for aviator positions who were formerly rated military aviators with previous honorable and creditable service in any component of the Armed