



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
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WASHINGTON, D.C. 20301-1500

MAY - 1 2014

RESERVE AFFAIRS

MEMORANDUM FOR ASSISTANT SECRETARIES OF THE MILITARY  
DEPARTMENTS (MANPOWER AND RESERVE AFFAIRS )

SUBJECT: Guidance on Service Implementation of 10 U.S.C. §12304b Order to active duty for preplanned missions in support of combatant commands

In response to numerous Service requests for interpretation, assistance and guidance on the utilization of 10 U.S.C. §12304b involuntary activation authority, the attached information paper is provided.

This information paper addresses many common Service questions and concerns regarding 12304b and should aid each Service in successfully accessing Reserve Component forces via 12304b when required to augment Active Component forces in the conduct of preplanned missions in support of Combatant Commands.

This information, and ongoing refinements, will be incorporated, where appropriate, into DODI 1235.12 "Accessing the Reserve Component," and DODD 1235.10 "Activation, Mobilization and Demobilization of the Ready Reserve," which are currently in official staffing for revision. Several points in this issue paper may also form the basis for potential Unified Legislative and Budgetary change submissions.

My point of contact for questions/concerns is CDR Wayne Gunther, USN, 703-693-8641, wayne.d.gunther.mil@mail.mil.

A handwritten signature in black ink, appearing to read "R. O. Wightman, Jr.", written in a cursive style.

Richard O. Wightman, Jr.  
Principal Deputy Assistant Secretary of Defense  
(Reserve Affairs)  
Performing the Duties of the Assistant  
Secretary of Defense (Reserve Affairs)

Attachment:  
As stated

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**INFORMATION PAPER**

May 01, 2014

**Subject: Preliminary OASD/RA Guidance Regarding Implementation of 10 U.S.C. §12304b**

**1. Ordering units to active duty under 10 U.S.C. §12304b to support a contingency operation as defined in 10 U.S.C. §101(a) (13).**

Subject to DoD policy, provided the Service complies with the requirements of §12304b, including that Units (as defined in §10143 (a)) may be ordered to active duty under this section only if:

- (A) the manpower and associated costs of such active duty are specifically included and identified in the defense budget materials for the fiscal year or years in which such units are anticipated to be ordered to active duty; and
- (B) The budget information on such costs includes a description of the mission for which such units are anticipated to be ordered to active duty and the anticipated length of time of the order of such units to active duty on an involuntary basis.

**2. What constitutes a "preplanned mission" as described in 10 U.S.C. §12304b.**

A valid preplanned mission under §12304b is one in support of a Combatant Commander in which the Service has complied with the requirements set forth in answer 1(A) and 1(B).

**3. Use of Overseas Contingency Operation (OCO) funding in support of §12304b activations.**

OCO funds may be used to fund §12304b activations when those mobilizations satisfy applicable OCO funding requirements per Comptroller guidance. NOTE: Some §12304b activations may satisfy OCO funding requirements, while others (e.g., a rotation to Korea for a year) may not.

**4. Submission of the "defense budget materials" described in 10 U.S.C. §12304b (b) for units ordered to active duty under 10 U.S.C. §12304b.**

The actual submission of the "defense budget materials" (commonly referred to as the J Book) to Congress, not simply preparation of the materials for submission, is required before a Service may issue orders to active duty to a unit under §12304b. Section 12304b(i) defines "defense budget materials" by reference to section 231 (f)(2) of title 10, U.S.C., which states, "The term "defense budget materials", with respect to a fiscal year, means the materials SUBMITTED to Congress by the Secretary of Defense in support of the budget for that fiscal year." (Emphasis added) For additional guidance please work with your Service comptrollers.

NOTE: The orders under §12304b may be approved and issued at any time after the submission to Congress of the defense budget materials notifying Congress of the intended

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use of §12304b, however the effective date of those orders (the first day that the unit may enter active duty and be funded in the fiscal year addressed in the defense budget materials) may not be earlier than the first day of that fiscal year referenced in the defense budget materials. (e.g.: for 12304b-compliant notice provided in the defense budget materials recently submitted to Congress as part of the FY15 budget, 12304b orders may be issued now but the ordered active duty and funding under section 12304b may begin no earlier than October 1, 2014.) Congressional action on the budget material via a full year appropriation act is not required, and orders commencing in FY2015 (and beyond) may be funded using provisional funding provided by a continuing appropriations act.

**5. Benefits and entitlements available to individuals involuntarily ordered to active duty under 10 U.S.C. §12302 in support of contingency operations that are NOT available to RC members involuntarily ordered to active duty under 10 U.S.C. § 12304b to support a contingency operation.**

One important distinction between active duty under §12302 and §12304b is that §12302 duty may qualify for a reduction in the eligibility age for reserve retired pay under §12731, whereas §12304b duty will not. Whether or not the §12304b duty is in support of a contingency operation does not matter. Additionally, §12304b orders do not provide RC members access to TRICARE prior their activation, nor does it provide TAMP benefits after deactivation. It is understood that a legislative change will be required to address these issues.

NOTE: Services may consider advising members involuntarily ordered to active duty under §12304b that such duty does not qualify for a reduction in the eligibility age for reserve retired pay and be given an option to volunteer, if they so desire, to serve under §12301(d), in which case their service may qualify for a reduction in the eligibility age for reserve retired pay.

**6. Permissible Service actions if the President does not extend the "Declaration of National Emergency by Reason of Certain Terrorist Attacks" past its scheduled expiration date of September 13, 2014 (or otherwise ends the use of 10 U.S.C. §12302 on that date).**

No new mobilizations under §12302 may be initiated or approved after the expiration date. However, if properly approved prior to expiration of the national emergency, all orders to active duty under §12302 remain valid for their duration regardless of whether the national emergency that formed the legal basis for the orders remains in effect on the mobilization start date. The National Emergencies Act specifically states that any actions (e.g., an order to active duty) based on any acts (e.g., issuance of orders to active duty) committed prior to the termination of the national emergency are not affected by the termination of the national emergency. The President, Secretary of Defense, or Secretary of a Military Department could, however, end such service as a matter of their discretion.

NOTE: Services should continue to process Mobilization approvals in a manner consistent with established timelines and practices as the September 14, 2014 date approaches. While it may be strictly legal to approve a large number of §12302 mobilizations for well into the

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future (e.g., September 2015 mobilizations) just prior to termination of the national emergency, we do not feel that would meet the spirit or intent of this provision.

**7. Processing §12304b requests that provide less than 180 day's notice between approval and active duty start date and/or will activate units that have dwell ratios of less than 1:4.**

Per DoDI 1235.12 "Accessing the Reserve Components," SECDEF approval is required for all involuntary mobilizations with less than 180 days between mobilization order approval and mobilization date, and for all mobilization requests when the unit or individual dwell ratio is less than 1:4. Therefore, any §12304b requests that fall inside 180 days advance notice, or for units/individuals with less than 1:4 dwell, will be routed to SECDEF for approval via the established SDOB process for such involuntary orders to active duty.

NOTE: Involuntary orders to active duty under §12304b must be in support of Pre-Planned missions, therefore excursions inside the 180 day notice red-line should occur very infrequently.

**8. Activating individuals, who are not members of units, under §12304b.**

Services cannot activate members who are not members of units. However, if it becomes necessary to fill emergent holes in units that have been properly ordered to active duty under §12304b, those holes may be filled by other members of the same unit or volunteers from outside the unit in question.

NOTE: The Services must identify to Congress the intended purpose and use of the unit in question for any activations under §12304b. If Services desire additional clarity regarding individuals and §12304b, we recommend submission of a legislative change proposal.

**9. Preferred frequency and method of reporting Service use of §12304b to Congress.**

Section (d) of 12304b mandates an additional written notice to Congress whenever the Secretary of a military department orders any units of the Selected Reserve to active duty under §12304b. The only specifics delineated are to: "set forth the circumstances necessitating the action taken under this section and describing the anticipated use of such unit."

NOTE: There is no preferred method or periodicity specified in Section (d) of 12304b. In absence of Congressional guidance, and per Services' request for guidance, we recommend a periodic (i.e. quarterly, semi-annually, or annually) memo be provided to members of the HASC and SASC in the year of execution addressing the anticipated use of all units ordered to active duty under §12304b in that period, and explaining the circumstances why it is necessary to order said units to active duty to meet combatant command requirements.

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