

Waiver of Statutory Qualifications Relating to Prior Military Service of the Secretary of Defense

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The Secretary of Defense, who has authority, direction, and control over the Department of Defense, is a civilian appointed by the President with the advice and consent of the Senate.

Section 113 of Title 10 of the *U.S. Code* provides that "[a] person may not be appointed as Secretary of Defense within seven years after relief from active duty as a commissioned officer of a regular component of an armed force." Such [statutory qualification provisions](#) are created by law, and thus may also be waived—or temporarily suspended for the benefit of a specific individual—by law on a case-by-case basis.

Since the establishment of the position of Secretary of Defense by the National Security Act of 1947, CRS has been able to identify one instance of Congress acting to waive this provision. Enacted on September 18, 1950, at the special request of President Truman during a time of war, P.L. 81-788 authorized the waiver of certain statutory requirements otherwise prohibiting General of the Army George C. Marshall from serving as the Secretary of Defense.

National Security Act of 1947 and Recent Changes

The [principle of civilian control](#) of the military places ultimate authority over the U.S. armed services in the hands of civilian leadership, with civilian responsibility and control of the military balanced between the executive and legislative branches of the government. The National Security Act of 1947 directed the President, with the advice and consent of the Senate, to position a civilian Secretary of Defense at the head of a newly unified national military establishment.

As enacted, Section 202 of the National Security Act of 1947 stipulated that a person "who has within ten years been on active duty as a commissioned officer in a Regular component of the armed services shall not be eligible for appointment as Secretary of Defense." This provision emerged from conference negotiations in July 1947—while both the House and Senate bills required the Secretary of Defense to be a civilian appointed by the President, the House bill specified that the Secretary of Defense "shall not have held a commission in a Regular component of the armed services." Historic congressional documentation is silent on the specifics of the conference committee's rationale in reaching this compromise; however, historians and observers—including statements made by Members of Congress

during congressional consideration of P.L. 81-788 in 1950—have tended to interpret this statutory mandate as ensuring an unambiguous break between an individual's active duty military career and service as a civilian Secretary of Defense.

In 2007, Section 903 of the National Defense Authorization Act for FY2008 ([P.L. 110-181](#)) reduced the time delay between an individual's retirement from active duty as a commissioned officer of a regular component of the armed services and eligibility for service as Secretary of Defense from 10 to 7 years.

Appointment of General George Marshall as Secretary of Defense in 1950

On September 13, 1950, President Harry Truman forwarded a legislative proposal to the House and Senate Armed Services Committees that sought to authorize [General of the Army George C. Marshall](#) to serve as Secretary of Defense.

While the measure had the support of many Members, it encountered significant and, at times, heated opposition by other Members, both at the committee and floor levels in each chamber. Supporters of the bill contended that the crisis of the ongoing Korean War justified making an exception to the relevant statutes for General Marshall, who was viewed as uniquely qualified for the position. Opponents of the measure asserted that the principle of civilian control over the military superseded all other considerations, including General Marshall's personal qualifications and the pressure of external circumstances.

As enacted, P.L. 81-788 temporarily suspended certain requirements associated with two statutory provisions specifically and only for General Marshall's nomination. These requirements would have either automatically made General Marshall ineligible for nomination due to an insufficient period of time elapsing between his military service and appointment as Secretary of Defense, or would have forced him to relinquish his commission as an active duty Army officer in order to serve as Secretary of Defense.

P.L. 81-788 also included a nonbinding section outlining congressional intent in providing Truman with the authority to nominate General Marshall:

It is hereby expressed as the intent of the Congress that the authority granted by this Act is not to be construed as approval by the Congress of continuing appointments of military men to the office of Secretary of Defense in the future. It is hereby expressed as the sense of the Congress that after General Marshall leaves the office of Secretary of Defense, no additional appointments of military men to that office shall be approved.

Following a September 19, 1950, confirmation hearing, the Senate voted to confirm General Marshall's nomination to the office of Secretary of Defense on September 20, 1950, by a vote of 57-11, with 28 Senators not voting.