Issue:

Military personnel who miss an examination filing period because of qualifying military duty and consequently are deprived of an opportunity to compete in an examination.

On August 2, 2005, Governor Pataki signed into Law Chapter 425 of the Laws of 2005, amending 243-b of the Military Law. The legislation provides for a special military make-up exam to be given to any member of the organized militia or reserves who, because of active military duty other than for training purposes, missed the application filing for an examination and as a result is deprived of an opportunity to compete in an examination.

The memorandum from the State of New York Department of Civil Service is attached for your review. Should you have any questions concerning this matter, please contact the University Civil Service Exams Office.

Attachment: Amendments to Section 243-b of The New York State Military Law.
MEMORANDUM

TO: All Municipal Civil Service Agencies

FROM: Municipal Service Division

SUBJECT: Chapter 425 Laws of 2005 – Amendments to Section 243-b of the New York State Military Law

DATE: September 7, 2005

On August 2, 2005, Governor Pataki signed into Law Chapter 425 of the Laws of 2005, which amends Section 243-b of the Military Law, by adding new subparts (2) and (3), regarding military personnel who missed an examination because of qualifying military duty. Unlike subpart (1) of Section 243-b which applies to members of the armed forces of the United States of America, the new subparts apply only to service, other than for training, in the organized militia (Army National Guard, Air National Guard, New York Naval Militia, New York Guard) and reserves. Chapter 425 is to be applied prospectively and would not affect examinations conducted prior to August 2, 2005.

A new subpart (2) to Section 243-b provides that any member of the organized militia or reserves who, because of active military duty other than for training purposes, missed the application filing for an examination and as a result is deprived of the opportunity to compete in an examination, shall be given a special military make-up exam. The make-up examination is to be administered under the terms and conditions set by the State Department of Civil Service or municipal civil service agency.

The State Department of Civil Service has established conditions for make-up examination where the examination is prepared and rated by New York State. These conditions can be found on pages 14 and 15 of the revised Veterans' Rights Manual for Municipalities. The revised Veterans' Manual is available on MSD Online. Agencies using examinations other than those prepared by New York State must develop procedures regarding military make-up examinations.

Chapter 425 also includes a new subpart (3) to Section 243-b. This subpart provides that any member of the organized militia or reserves who, because of active
military duty other than for training purposes, misses the application deadline for a scheduled examination and who returns from such duty prior to the administration of such examination be granted a waiver of the application requirement and be allowed to compete in the examination. However, it is our opinion that a candidate who failed to file a timely application due to military duty is not necessarily entitled to be tested on a walk-in basis. Even if the candidate is available on the scheduled test date, he or she may be required to compete according to alternate test date procedures because of the potential administrative difficulties.

In order to be eligible for a make-up exam, the candidate must submit a copy of military orders, DD 214, or other official military documentation that substantiates his/her military service at the time of the application filing deadline or examination. In addition, the candidate must meet the minimum qualifications required of all other candidates in the original announcement in order to have his/her name added to the eligible list. Consequently, each candidate will need to file an application and be found qualified by the municipal civil service agency before the candidate's name is added to the eligible list. This will be the case even where the application is submitted following the administration of the examination. In addition, you should be aware that Section 243-b does not provide for waivers of any required examination fees for a military make-up examination; consequently, any application fees required of other candidates will be required for military make-up examination candidates.

Note a candidate who is entitled to take an examination under these provisions may not necessarily be entitled to other benefits afforded to military service members or veterans and disabled veterans pursuant to the New York State Constitution or any other laws. The candidate's eligibility for other military merit system benefits must be evaluated on a case-by-case basis in accordance with the requirements established by the respective law.

Since the provisions of Sections 243-b (2) and (3) apply to individuals that have missed the filing period for examination, it is recommended that a separate notice concerning potential military make-up examination entitlement be conspicuously posted on your website as well as any other site where your examination announcements are found.

We have made appropriate revisions to the Veterans’ Rights Manual for Municipalities and the Veterans’ Rights Resources Chart based on the changes to Section 243-b. Both of these resources are available on MSD Online and may be downloaded.

If you have questions or need additional information pertaining to civil service rights for veterans or military service members, you should review recent circular letters along with the Veterans’ Rights Manual for Municipalities or contact your Municipal Personnel Consultant. A copy of Chapter 425 is attached for your review.

[Signature]
Director, Municipal Service Division

Attachment
AN ACT to amend the military law, in relation to civil service examinations by military personnel

Became a law August 2, 2005, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 243-b of the military law, as added by chapter 416 of the laws of 1991, is amended to read as follows:

§ 243-b. (Make-up of civil) Civil service examinations by military personnel. 1. Notwithstanding any other provision of this chapter or any other law, any member of the armed forces of the United States of America who having duly filed an application to compete in a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions and who due to active military duty is deprived of the opportunity to compete in such examination shall be provided with an opportunity to compete, under terms and conditions deemed appropriate by the state department of civil service or municipal commission, by way of a special military make-up examination.

2. Notwithstanding any other provision of this chapter or any other law, any member of the force of the organized militia, as the term is defined in subdivision nine of section one of this chapter or reserve armed forces, as that term is defined in subdivision twenty-nine of section two hundred ninety-two of the executive law who missed the application deadline for a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty other than for training, pursuant to 10 USC 101 (d) (1), and is deprived of the opportunity to compete in such examination due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty other than for training, pursuant to 10 USC 101 (d) (1), shall be provided with an opportunity to compete, under terms and conditions deemed appropriate by the state department of civil service or municipal commission, by way of a special military make-up examination.

3. Notwithstanding any other provision of this chapter or any other law, any member of the force of the organized militia, as the term is defined in subdivision nine of section one of this chapter or reserve armed forces, as that term is defined in subdivision twenty-nine of section two hundred ninety-two of the executive law who missed the application deadline for a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty other than for training, pursuant to 10 USC 101 (d) (1), and who returns from such duty prior to the administration of such competitive examination shall be granted a waiver of the application requirement and allowed to compete in such upcoming examination.

§ 2. This act shall take effect immediately.
EXPLANATION—Matter in italics is new; matter in brackets [-] is old law to be omitted.