

tion board convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and policies which would have been applicable had he been recommended for promotion by the board which should have considered or which did consider him.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

(3) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

(f) **TIME LIMITS FOR CONSIDERATION.**—The Secretary of Defense may prescribe by regulation the circumstances under which consideration by a special selection board is contingent upon application for consideration by an officer or former officer and time limits within which an officer or former officer must make such application in order to be considered by a special selection board under this section.

(g) **LIMITATION OF OTHER JURISDICTION.**—No official or court of the United States shall have power or jurisdiction—

(1) over any claim based in any way on the failure of an officer or former officer of the armed forces to be selected for promotion by a selection board convened under chapter 1403 of this title until—

(A) the claim has been referred to a special selection board by the Secretary concerned and acted upon by that board; or

(B) the claim has been rejected by the Secretary without consideration by a special selection board; or

(2) to grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim.

(h) **JUDICIAL REVIEW.**—(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1), (b)(1), or (e)(3) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for consideration of the officer or former officer by a special selection board under this section.

(2) If a court finds that the action of a special selection board which considers an officer or former officer was contrary to law or involved material error of fact or material administrative error, it shall remand the case to the Secretary concerned, who shall provide the officer or former officer reconsideration by a new special selection board.

(i) **DESIGNATION OF BOARDS.**—The Secretary of the military department concerned may designate a promotion board convened under section 14101(a) of this title as a special selection board convened under this section. A board so designated may function in both capacities.

(Added Pub. L. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2947; amended Pub. L. 107-107, div. A, title V, § 505(c)(3)(B), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 109-364, div. A, title V, § 514(b), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 114-92, div. A, title V, §§ 502(c)(2), 512, Nov. 25, 2015, 129 Stat. 807, 809.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5904 of this title, prior to repeal by Pub. L. 103-337, § 1629(b)(2).

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114-92, § 502(c)(2), struck out “or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) of this title because of administrative error,” after “administrative error.”

Subsec. (b)(1). Pub. L. 114-92, § 512(1), substituted “a mandatory promotion board convened under section 14101(a) of this title” for “a selection board” in introductory provisions and “mandatory promotion board” for “selection board” in subpars. (A) and (B).

Subsec. (b)(3). Pub. L. 114-92, § 512(2), in first sentence, substituted “The special selection board” for “Such board” and “mandatory promotion board” for “selection board”.

2006—Subsec. (b)(1)(A). Pub. L. 109-364 inserted “in a matter material to the decision of the board” after “contrary to law”.

2001—Subsec. (a)(1). Pub. L. 107-107 inserted “or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) of this title because of administrative error,” after “because of administrative error.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-364 effective Mar. 1, 2007, and applicable with respect to selection boards convened on or after that date, see section 514(c) of Pub. L. 109-364, set out as a note under section 628 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 14502a. Special selection review boards

(a) **IN GENERAL.**—(1) If the Secretary of the military department concerned determines that a person recommended by a promotion board for promotion to a grade at or below the grade of major general or rear admiral in the Navy is the subject of credible information of an adverse nature, including any substantiated adverse find-

ing or conclusion described in section 14107(a)(3)(A) of this title, that was not furnished to the promotion board during its consideration of the person for promotion as otherwise required by such section, the Secretary shall convene a special selection review board under this section to review the person and recommend whether the recommendation for promotion of the person should be sustained.

(2) If a person and the recommendation for promotion of the person is subject to review under this section by a special selection review board convened under this section, the name of the person—

(A) shall not be disseminated or publicly released on the list of officers recommended for promotion by the promotion board recommending the promotion of the person; and

(B) shall not be forwarded for appointment or nomination to the Secretary of Defense, the President, or the Senate, as applicable.

(b) CONVENING.—(1) Any special selection review board convened under this section shall be convened in accordance with the provisions of section 14502(b)(2) of this title.

(2) Any special selection review board convened under this section may review such number of persons, and recommendations for promotion of such persons, as the Secretary of the military department concerned shall specify in convening such special selection review board.

(c) INFORMATION CONSIDERED.—(1) In reviewing a person and recommending whether the recommendation for promotion of the person should be sustained under this section, a special selection review board convened under this section shall be furnished and consider the following:

(A) The record and information concerning the person furnished in accordance with section 14107(a)(2) of this title to the promotion board that recommended the person for promotion.

(B) Any credible information of an adverse nature on the person, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry described in section 14107(a)(3)(A) of this title.

(2) The furnishing of information to a special selection review board under paragraph (1)(B) shall be governed by the standards and procedures referred to in paragraph (3)(B) of section 14107(a) of this title applicable to the furnishing of information described in paragraph (3)(A) of such section to promotion boards in accordance with that section.

(3)(A) Before information on person described in paragraph (1)(B) is furnished to a special selection review board for purposes of this section, the Secretary of the military department concerned shall ensure that—

(i) such information is made available to the person; and

(ii) subject to subparagraphs (C) and (D), the person is afforded a reasonable opportunity to submit comments on such information to the special selection review board before its review of the person and the recommendation for promotion of the person under this section.

(B) If information on an officer described in paragraph (1)(B) is not made available to the

person as otherwise required by subparagraph (A)(i) due to the classification status of such information, the person shall, to the maximum extent practicable, be furnished a summary of such information appropriate to the person's authorization for access to classified information.

(C)(i) An opportunity to submit comments on information is not required for a person under subparagraph (A)(ii) if—

(I) such information was made available to the person in connection with the furnishing of such information under section 14107(a) of this title to the promotion board that recommended the promotion of the person subject to review under this section; and

(II) the person submitted comments on such information to that promotion board.

(ii) The comments on information of a person described in clause (i)(II) shall be furnished to the special selection review board.

(D) A person may waive either or both of the following:

(i) The right to submit comments to a special selection review board under subparagraph (A)(ii).

(ii) The furnishing of comments to a special selection review board under subparagraph (C)(ii).

(d) CONSIDERATION.—(1) In considering the record and information on a person under this section, the special selection review board shall compare such record and information with an appropriate sampling of the records of those officers of the same competitive category who were recommended for promotion by the promotion board that recommended the person for promotion, and an appropriate sampling of the records of those officers who were considered by and not recommended for promotion by that promotion board.

(2) Records and information shall be presented to a special selection review board for purposes of paragraph (1) in a manner that does not indicate or disclose the person or persons for whom the special selection review board was convened.

(3) In considering whether the recommendation for promotion of a person should be sustained under this section, a special selection review board shall, to the greatest extent practicable, apply standards used by the promotion board that recommended the person for promotion.

(4) The recommendation for promotion of a person may be sustained under this section only if the special selection review board determines that the person—

(A) ranks in the upper half of an order of merit created by the special selection review board or ranks on an order of merit created by the special selection review board as better qualified for promotion than the sample officer highest on the order of merit list who was considered by and not recommended for promotion by the promotion board concerned; and

(B) is comparable in qualification for promotion to those sample officers who were recommended for promotion by that promotion board.

(5) A recommendation for promotion of a person may be sustained under this section only by

a vote of a majority of the members of the special selection review board.

(6) If a special selection review board does not sustain a recommendation for promotion of a person under this section, the person shall be considered to have failed of selection for promotion.

(e) REPORTS.—(1) Each special selection review board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person whose recommendation for promotion it recommends for sustenance and certifying that the board has carefully considered the record and information of each person whose name was referred to it.

(2) The provisions of sections 14109(c), 14110, and 14111 of this title apply to the report and proceedings of a special selection review board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 14101(a) of this title.

(f) APPOINTMENT OF PERSONS.—(1) If the report of a special selection review board convened under this section recommends the sustenance of the recommendation for promotion to the next higher grade of a person whose name was referred to it for review under this section, and the President approves the report, the person shall, as soon as practicable, be appointed to that grade in accordance with section 14308 of this title.

(2) A person who is appointed to the next higher grade as described in paragraph (1) shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the person would have had pursuant to the original recommendation for promotion of the promotion board concerned.

(g) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly across the military departments.

(2) Any regulation prescribed by the Secretary of a military department to supplement the regulations prescribed pursuant to paragraph (1) may not take effect without the approval of the Secretary of Defense, in writing.

(h) PROMOTION BOARD DEFINED.—In this section, the term “promotion board” means a selection board convened by the Secretary of a military department under section 14101(a) of this title.

(Added Pub. L. 116–283, div. A, title V, § 505(b)(1), Jan. 1, 2021, 134 Stat. 3569; amended Pub. L. 118–31, div. A, title V, § 507(b), Dec. 22, 2023, 137 Stat. 242; Pub. L. 118–159, div. A, title V, § 506(b), Dec. 23, 2024, 138 Stat. 1871.)

Editorial Notes

AMENDMENTS

2024—Subsec. (d)(4)(A). Pub. L. 118–159 inserted “ranks in the upper half of an order of merit created by the special selection review board or” before “ranks on an order of merit created by the special selection review board as better qualified”.

2023—Subsec. (a)(2)(B). Pub. L. 118–31 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “shall not be forwarded to the Secretary of Defense, the President, or the Senate, as applicable, or included on a promotion list under section 14308(a) of this title.”

§ 14503. Discharge of officers with less than six years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)

(a) AUTHORIZED DISCHARGES.—The Secretary of the military department concerned may discharge any reserve officer who—

(1) has less than six years of service in an active status as a commissioned officer; or

(2) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade).

(b) TIME FOR DISCHARGE.—(1) An officer described in subsection (a)(2)—

(A) may be discharged at any time after being found not qualified for promotion; and

(B) if not sooner discharged, shall be discharged at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(2) Paragraph (1) shall not apply if the officer is sooner promoted.

(c) REGULATIONS.—Discharges under this section shall be made under regulations prescribed by the Secretary of Defense and may be made without regard to section 12645 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2949; amended Pub. L. 110–181, div. A, title V, § 503(c)(1), (2), Jan. 28, 2008, 122 Stat. 95.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in subssecs. (a) and (b) of this section were contained in sections 3819(b) and 8819(c) of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(2), (c)(2).

AMENDMENTS

2008—Pub. L. 110–181, § 503(c)(2), substituted “six years” for “five years” in section catchline.

Subsec. (a)(1). Pub. L. 110–181, § 503(c)(1), substituted “six years” for “five years”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

RIGHTS FOR OFFICERS WITH OVER THREE YEARS SERVICE

Pub. L. 103–337, div. A, title XVI, § 1689, Oct. 5, 1994, 108 Stat. 3025, provided that: “A reserve officer of the Army, Navy, Air Force, or Marine Corps who was in an active status on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title] and who was subject to placement of the reserve active-status list on the effective date of this title may not be discharged under section 14503 of title 10, United States Code, as added by this