

manders of the Navy", was executed by making the amendment to the analysis for this subchapter to reflect the probable intent of Congress.

2021—Pub. L. 116-283, div. A, title V, § 505(a)(2), Jan. 1, 2021, 134 Stat. 3568, added item 628a.

2008—Pub. L. 110-181, div. A, title V, § 503(a)(3), Jan. 28, 2008, 122 Stat. 95, substituted "six years" for "five years" in item 630.

2001—Pub. L. 107-107, div. A, title V, § 505(d)(4), Dec. 28, 2001, 115 Stat. 1088, struck out "regular" before "commissioned officers" in item 630, struck out "regular" before "first lieutenants" in item 631, and struck out "regular" before "captains and majors" and before "lieutenants and lieutenant commanders" in item 632.

1997—Pub. L. 105-85, div. A, title V, § 506(c), Nov. 18, 1997, 111 Stat. 1726, substituted "regular officers in grades above brigadier general and rear admiral (lower half)" for "regular major generals and rear admirals" in item 636.

1985—Pub. L. 99-145, title V, § 514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted "rear admirals (lower half)" for "commodores" in item 635.

1981—Pub. L. 97-86, title IV, § 405(b)(5)(B), Dec. 1, 1981, 95 Stat. 1106, substituted "commodores" for "commodore admirals" in item 635.

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2859.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

§ 628. Special selection boards

(a) PERSONS NOT CONSIDERED BY PROMOTION BOARDS DUE TO ADMINISTRATIVE ERROR.—(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the

person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

(b) PERSONS CONSIDERED BY PROMOTION BOARDS IN UNFAIR MANNER.—(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

(c) REPORTS OF BOARDS.—(1) Each special selection 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 it recommends for promotion and certifying that the board has carefully considered the record of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d), 576(f), and 613a of this title (rather than the pro-

visions of sections 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.

(d) **APPOINTMENT OF PERSONS SELECTED BY BOARDS.**—(1) 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 a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).

(2) A person who is appointed to the next higher grade as the result of the recommendation of a special selection board convened under this section 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 active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him. In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.

(e) **DECEASED PERSONS.**—If a person whose name is being considered for referral to a special selection board under this section dies before the completion of proceedings under this section with respect to that person, this section shall be applied to that person posthumously.

(f) **CONVENING OF BOARDS.**—A board convened under this section—

(1) shall be convened under regulations prescribed by the Secretary of Defense;

(2) shall be composed in accordance with section 612 of this title or, in the case of board to consider a warrant officer or former warrant officer, in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned; and

(3) shall be subject to the provisions of section 613 of this title.

(g) **JUDICIAL REVIEW.**—(1)(A) A court of the United States may review a determination by the Secretary of a military department under subsection (a)(1) or (b)(1) not to convene a special selection board in the case of any person. In any such case, the court may set aside the Secretary's determination only if the court finds the determination to be—

(i) arbitrary or capricious;

(ii) not based on substantial evidence;
(iii) a result of material error of fact or material administrative error; or
(iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special selection board under this section, it shall remand the case to the Secretary concerned, who shall provide for consideration by such a board.

(2) A court of the United States may review the action of a special selection board convened under this section or an action of the Secretary of the military department concerned on the report of such a board. In any such case, a court may set aside the action only if the court finds that the action was—

(A) arbitrary or capricious;
(B) not based on substantial evidence;
(C) a result of material error of fact or material administrative error; or
(D) otherwise contrary to law.

(3)(A) If, six months after receiving a complete application for consideration by a special selection board under this section in any case, the Secretary concerned has not convened such a board and has not denied consideration by such a board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied the consideration of the case by such a board.

(B) If, six months after the convening of a special selection board under this section in any case, the Secretary concerned has not taken final action on the report of the board, the Secretary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (j), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(h) **LIMITATIONS OF OTHER JURISDICTION.**—No official or court of the United States may, with respect to a claim based to any extent on the failure of a person to be selected for promotion by a promotion board—

(1) consider the claim unless the person has first been referred by the Secretary concerned to a special selection board convened under this section and acted upon by that board and the report of the board has been approved by the President; or

(2) except as provided in subsection (g), grant any relief on the claim unless the person has been selected for promotion by a special selection board convened under this section to consider the person for recommendation for promotion and the report of the board has been approved by the President.

(i) **EXISTING JURISDICTION.**—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(j) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (g), other than to paragraph (3)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special selection board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person's case by a special selection board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(k) PROMOTION BOARD DEFINED.—In this section, the term "promotion board" means a selection board convened by the Secretary of a military department under section 573(a) or 611(a) of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2859; amended Pub. L. 98-525, title V, §527(a), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 102-190, div. A, title XI, §1131(4), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 102-484, div. A, title X, §1052(10), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 105-261, div. A, title V, §501(a)-(e), Oct. 17, 1998, 112 Stat. 2000-2002; Pub. L. 106-398, §1 [[div. A], title X, §1087(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A-290; Pub. L. 107-107, div. A, title V, §503(b), 505(c)(3)(A), Dec. 28, 2001, 115 Stat. 1083, 1088; Pub. L. 109-364, div. A, title V, §514(a), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 111-383, div. A, title V, §503(b), Jan. 7, 2011, 124 Stat. 4208; Pub. L. 114-92, div. A, title V, §502(c)(1), Nov. 25, 2015, 129 Stat. 807.)

Editorial Notes

AMENDMENTS

2015—Subsec. (a)(1). Pub. L. 114-92 struck out "or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed," after "not so considered."

2011—Subsec. (c)(2). Pub. L. 111-383 substituted "sections 576(d), 576(f), and 613a" for "sections 576(d) and 576(f)".

2006—Subsec. (a)(1). Pub. L. 109-364, §514(a)(1), inserted "from in or above the promotion zone" after "for selection for promotion".

Subsec. (b)(1)(A). Pub. L. 109-364, §514(a)(2), inserted "in a matter material to the decision of the board" after "contrary to law".

2001—Subsec. (a)(1). Pub. L. 107-107, §505(c)(3)(A), inserted "or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed," after "not so considered."

Subsecs. (g) to (k). Pub. L. 107-107, §503(b), added subsecs. (g) to (j) and redesignated former subsec. (g) as (k).

2000—Subsec. (c)(2). Pub. L. 106-398 substituted "sections" for "section" after "rather than the provisions of".

1998—Subsec. (a). Pub. L. 105-261, §501(a)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: "In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion."

Subsec. (a)(2). Pub. L. 105-261, §501(a)(2), substituted "the person whose name was referred to it for consideration as that record" for "the officer as his record".

Subsec. (a)(3). Pub. L. 105-261, §501(a)(3), substituted "a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person" for "an officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain whose name was referred to it for consideration, the officer".

Subsec. (b). Pub. L. 105-261, §501(b)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: "In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

"(A) the action of the board which considered the officer was contrary to law or involved material error of fact or material administrative error; or

"(B) the board did not have before it for its consideration material information."

Subsec. (b)(2). Pub. L. 105-261, §501(b)(2), substituted "the person whose name was referred to it for consideration as that record" for "the officer as his record".

Subsec. (b)(3). Pub. L. 105-261, §501(b)(3)(A), substituted "a person" for "an officer" and "the person" for "the officer".

Subsec. (c). Pub. L. 105-261, §501(c)(1)(A), inserted heading.

Subsec. (c)(1). Pub. L. 105-261, §501(c)(1)(B), substituted "person" for "officer" in two places.

Subsec. (c)(2). Pub. L. 105-261, §501(c)(1)(C), inserted at end "However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d) and 576(f) of this title (rather than the provisions of section 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title."

Subsec. (d). Pub. L. 105-261, §501(c)(2)(A), inserted heading.

Subsec. (d)(1). Pub. L. 105-261, §501(c)(2)(B)-(E), substituted "a person" for "an officer", "that person" for "such officer", and "that grade in" for "the next higher grade in" and inserted at end "However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title)."

Subsec. (d)(2). Pub. L. 105-261, §501(c)(3), substituted "A person who is appointed" for "An officer who is pro-

moted” and “that appointment” for “such promotion” and inserted at end “In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.”

Subsec. (e). Pub. L. 105-261, §501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The provisions of section 613 of this title apply to members of special selection boards convened under this section.”

Subsecs. (f), (g). Pub. L. 105-261, §501(e), added subsecs. (f) and (g).

1992—Subsec. (b)(1). Pub. L. 102-484 substituted “section 573” for “section 558”.

1991—Subsec. (a)(1). Pub. L. 102-190 substituted “section 573” for “section 558”.

1984—Subsecs. (a)(1), (b)(1). Pub. L. 98-525 substituted “(composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned)” for “(composed in accordance with section 612 of this title)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, §514(c), Oct. 17, 2006, 120 Stat. 2185, provided that: “The amendments made by this section [amending this section and section 14502 of this title] shall take effect on March 1, 2007, and shall apply with respect to selection boards convened on or after that date.”

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §503(c), Dec. 28, 2001, 115 Stat. 1084, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 1558 of this title and amending this section] shall apply with respect to any proceeding pending on or after the date of the enactment of this Act [Dec. 28, 2001] without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date.

“(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

RATIFICATION OF CODIFIED PRACTICE

Pub. L. 105-261, div. A, title V, §501(f), Oct. 17, 1998, 112 Stat. 2002, provided that the consideration by a special selection board convened under this section before Oct. 17, 1998, of a person who, at the time of consideration, had been a retired officer or former officer of the Armed Forces (including a deceased retired or former officer) was ratified.

Executive Documents

DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) to approve, modify, or disapprove report of a selection board

delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

§ 628a. Special selection review boards

(a) IN GENERAL.—(1)(A) 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 finding or conclusion described in section 615(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.

(B) Nothing in this section shall be construed to prevent a Secretary concerned from deferring consideration of adverse information concerning an officer subject to this section until the next regularly scheduled promotion board applicable to such officer, in lieu of furnishing such adverse information to a special selection review board under this section.

(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 628(f) 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 615(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 615(a)(3)(A) of this title.