

(4) A description of any other matters the Secretary considered in determining to designate the competitive category for purposes of this subchapter.

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1744.)

#### § 649b. Selection for promotion

(a) IN GENERAL.—Except as provided in this section, the selection for promotion of officers in any competitive category of officers designated for purposes of this subchapter shall be governed by the provisions of subchapter I of this chapter.

(b) NO RECOMMENDATION FOR PROMOTION OF OFFICERS BELOW PROMOTION ZONE.—Section 616(b) of this title shall not apply to the selection for promotion of officers described in subsection (a).

(c) RECOMMENDATION FOR OFFICERS TO BE EXCLUDED FROM FUTURE CONSIDERATION FOR PROMOTION.—In making recommendations pursuant to section 616 of this title for purposes of the administration of this subchapter, a selection board convened under section 611(a) of this title may recommend that an officer considered by the board be excluded from future consideration for promotion under this chapter.

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1744.)

#### § 649c. Eligibility for consideration for promotion

(a) IN GENERAL.—Except as provided by this section, eligibility for promotion of officers in any competitive category of officers designated for purposes of this subchapter shall be governed by the provisions of section 619 of this title.

(b) INAPPLICABILITY OF CERTAIN TIME-IN-GRADE REQUIREMENTS.—Paragraphs (2) through (4)<sup>1</sup> of section 619(a) of this title shall not apply to the promotion of officers described in subsection (a).

(c) INAPPLICABILITY TO OFFICERS ABOVE AND BELOW PROMOTION ZONE.—The following provisions of section 619(c) of this title shall not apply to the promotion of officers described in subsection (a):

- (1) The reference in paragraph (1) of that section to an officer above the promotion zone.
- (2) Paragraph (2)(A) of that section.

(d) INAPPLICABILITY OF REQUIREMENT RELATING TO OPPORTUNITIES FOR CONSIDERATION FOR PROMOTION.—Section 645(1)(A)(i)(I) of this title shall not apply to the promotion of officers described in subsection (a) to the extent that such section is inconsistent with a number of opportunities for promotion specified pursuant to section 649d of this title.

(e) INELIGIBILITY OF CERTAIN OFFICERS.—The following officers are not eligible for promotion under this subchapter:

- (1) An officer described in section 619(d) of this title.
- (2) An officer not included within the promotion zone.
- (3) An officer who has failed of promotion to a higher grade the maximum number of times specified for opportunities for promotion for such grade within the competitive category

concerned pursuant to section 649d of this title.

(4) An officer recommended by a selection board to be removed from consideration for promotion in accordance with section 649b(c) of this title.

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1745; amended Pub. L. 116-283, div. A, title V, § 506, Jan. 1, 2021, 134 Stat. 3573.)

#### Editorial Notes

##### REFERENCES IN TEXT

Paragraph (4) of section 619(a) of this title, referred to in subsec. (b), was redesignated paragraph (5) of section 619(a) of this title by Pub. L. 117-81, div. A, title V, § 502(2), Dec. 27, 2021, 135 Stat. 1680.

##### AMENDMENTS

2021—Subsecs. (d), (e). Pub. L. 116-283 added subsec. (d) and redesignated former subsec. (d) as (e).

#### § 649d. Opportunities for consideration for promotion

(a) SPECIFICATION OF NUMBER OF OPPORTUNITIES FOR CONSIDERATION FOR PROMOTION.—In designating a competitive category of officers pursuant to section 649a of this title, the Secretary of a military department shall specify the number of opportunities for consideration for promotion to be afforded officers of the armed force concerned within the category for promotion to each grade above the grade of first lieutenant or lieutenant (junior grade), as applicable.

(b) LIMITED AUTHORITY OF SECRETARY OF MILITARY DEPARTMENT TO MODIFY NUMBER OF OPPORTUNITIES.—The Secretary of a military department may modify the number of opportunities for consideration for promotion to be afforded officers of an armed force within a competitive category for promotion to a particular grade, as previously specified by the Secretary pursuant subsection (a) or this subsection, not more frequently than once every five years.

(c) DISCRETIONARY AUTHORITY OF SECRETARY OF DEFENSE TO MODIFY NUMBER OF OPPORTUNITIES.—The Secretary of Defense may modify the number of opportunities for consideration for promotion to be afforded officers of an armed force within a competitive category for promotion to a particular grade, as previously specified or modified pursuant to any provision of this section, at the discretion of the Secretary.

(d) LIMITATION ON NUMBER OF OPPORTUNITIES SPECIFIED.—The number of opportunities for consideration for promotion to be afforded officers of an armed force within a competitive category for promotion to a particular grade, as specified or modified pursuant to any provision of this section, may not exceed five opportunities.

(e) EFFECT OF CERTAIN REDUCTION IN NUMBER OF OPPORTUNITIES SPECIFIED.—If, by reason of a reduction in the number of opportunities for consideration for promotion under this section, an officer would no longer have one or more opportunities for consideration for promotion that were available to the officer before the reduction, the officer shall be afforded one additional opportunity for consideration for promotion after the reduction.

<sup>1</sup> See References in Text note below.

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1745.)

**§ 649e. Promotions**

Sections 620 through 626 of this title shall apply in promotions of officers in competitive categories of officers designated for purposes of this subchapter.

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1746.)

**§ 649f. Failure of selection for promotion**

(a) IN GENERAL.—Except as provided in this section, sections 627 through 632 of this title shall apply to promotions of officers in competitive categories of officers designated for purposes of this subchapter.

(b) INAPPLICABILITY OF FAILURE OF SELECTION FOR PROMOTION TO OFFICERS ABOVE PROMOTION ZONE.—The reference in section 627 of this title to an officer above the promotion zone shall not apply in the promotion of officers described in subsection (a).

(c) SPECIAL SELECTION BOARD MATTERS.—The reference in section 628(a)(1) of this title to a person above the promotion zone shall not apply in the promotion of officers described in subsection (a).

(d) EFFECT OF FAILURE OF SELECTION.—In the administration of this subchapter pursuant to subsection (a)—

(1) an officer described in subsection (a) shall not be deemed to have failed twice of selection for promotion for purposes of section 629(e)(2) of this title until the officer has failed selection of promotion to the next higher grade the maximum number of times specified for opportunities for promotion to such grade within the competitive category concerned pursuant to section 649d of this title; and

(2) any reference in section 631(a) or 632(a) of this title to an officer who has failed of selection for promotion to the next higher grade for the second time shall be deemed to refer instead to an officer described in subsection (a) who has failed of selection for promotion to the next higher grade for the maximum number of times specified for opportunities for promotion to such grade within the competitive category concerned pursuant to such section 649d.

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1746.)

**§ 649g. Retirement: retirement for years of service; selective early retirement**

(a) RETIREMENT FOR YEARS OF SERVICES.—Sections 633 through 636 of this title shall apply to the retirement of officers in competitive categories of officers designated for purposes of this subchapter.

(b) SELECTIVE EARLY RETIREMENT.—Sections 638 and 638a of this title shall apply to the retirement of officers described in subsection (a).

(Added Pub. L. 115-232, div. A, title V, § 507(a)(1), Aug. 13, 2018, 132 Stat. 1747.)

**§ 649h. Continuation on active duty**

(a) IN GENERAL.—An officer subject to discharge or retirement pursuant to this sub-

chapter may, subject to the needs of the service, be continued on active duty if the officer is selected for continuation on active duty in accordance with this section by a selection board convened under section 611(b) of this title.

(b) IDENTIFICATION OF POSITIONS FOR OFFICERS CONTINUED ON ACTIVE DUTY.—

(1) IN GENERAL.—Officers may be selected for continuation on active duty pursuant to this section only for assignment to positions identified by the Secretary of the military department concerned for which vacancies exist or are anticipated to exist.

(2) IDENTIFICATION.—Before convening a selection board pursuant to section 611(b) of this title for purposes of selection of officers for continuation on active duty pursuant to this section, the Secretary of the military department concerned shall specify for purposes of the board the positions identified by the Secretary to which officers selected for continuation on active duty may be assigned.

(c) RECOMMENDATION FOR CONTINUATION.—A selection board may recommend an officer for continuation on active duty pursuant to this section only if the board determines that the officer is qualified for assignment to one or more positions identified pursuant to subsection (b) on the basis of skills, knowledge, and behavior required of an officer to perform successfully in such position or positions.

(d) APPROVAL OF SECRETARY OF MILITARY DEPARTMENT.—Continuation of an officer on active duty under this section pursuant to the action of a selection board is subject to the approval of the Secretary of the military department concerned.

(e) NONACCEPTANCE OF CONTINUATION.—An officer who is selected for continuation on active duty pursuant to this section, but who declines to continue on active duty, shall be discharged or retired, as appropriate, in accordance with section 632 of this title.

(f) PERIOD OF CONTINUATION.—

(1) IN GENERAL.—An officer continued on active duty pursuant to this section shall remain on active duty, and serve in the position to which assigned (or in another position to which assigned with the approval of the Secretary of the military department concerned), for a total of not more than three years after the date of assignment to the position to which first so assigned.

(2) ADDITIONAL CONTINUATION.—An officer whose continued service pursuant to this section would otherwise expire pursuant to paragraph (1) may be continued on active duty if selected for continuation on active duty in accordance with this section before the date of expiration pursuant to that paragraph.

(g) EFFECT OF EXPIRATION OF CONTINUATION.—Each officer continued on active duty pursuant to this subsection who is not selected for continuation on active duty pursuant to subsection (f)(2) at the completion of the officer's term of continued service shall, unless sooner discharged or retired under another provision of law—

(1) be discharged upon the expiration of the term of continued service; or