

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-213 effective Dec. 20, 2012, with provision for convening a special selection board for certain errors occurring on or after the date that is 1 year before Dec. 20, 2012, see section 208(e)(1) of Pub. L. 112-213, set out as a note under section 2118 of this title.

PLACEMENT OUT OF LINE OF PROMOTION PRIOR TO SEPTEMBER 24, 1963

Pub. L. 88-130, §2(a), (b), Sept. 24, 1963, 77 Stat. 190, provided that:

“(a) Officers who have been placed permanently out of line of promotion under laws and regulations of the Secretary in effect the day before the effective date of this Act [Sept. 24, 1963] shall be considered as having failed of selection for promotion to the next higher grade for the second time on the day before the effective date of this Act, and shall be subject to the provisions of sections 282 through 285 [now 2142 through 2145] of title 14, United States Code, as appropriate. No officer shall be separated from the service under the above provisions prior to the last day of the sixth calendar month following the effective date of this Act.

“(b) Officers who have been placed temporarily out of line of promotion for appointment for temporary service under laws and regulations of the Secretary in effect the day before the effective date of this Act [Sept. 24, 1963] shall be considered as having once failed of selection for promotion to the next higher grade.”

§ 2120. Special selection boards; correction of errors**(a) OFFICERS NOT CONSIDERED DUE TO ADMINISTRATIVE ERROR.—**

(1) IN GENERAL.—If the Secretary determines that as the result of an administrative error—

(A) an officer or former officer was not considered for selection for promotion by a selection board convened under section 2106; or

(B) the name of an officer or former officer was not placed on an all-fully-qualified-officers list;

the Secretary shall convene a special selection board to determine whether such officer or former officer should be recommended for promotion and such officer or former officer shall not be considered to have failed of selection for promotion prior to the consideration of the special selection board.

(2) EFFECT OF FAILURE TO RECOMMEND FOR PROMOTION.—If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is below the grade of captain and whose name was referred to that board for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) OFFICERS CONSIDERED BUT NOT SELECTED; MATERIAL ERROR.—

(1) IN GENERAL.—In the case of an officer or former officer who was eligible for promotion, was considered for selection for promotion by a selection board convened under section 2106, and was not selected for promotion by that board, the Secretary may convene a special selection board to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that—

(A) an action of the selection board that considered the officer or former officer—

(i) was contrary to law in a matter material to the decision of the board; or

(ii) involved material error of fact or material administrative error; or

(B) the selection board that considered the officer or former officer did not have before it for consideration material information.

(2) EFFECT OF FAILURE TO RECOMMEND FOR PROMOTION.—If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is that of commander or below and whose name was referred to that board for consideration, the officer or former officer shall be considered—

(A) to have failed of selection for promotion with respect to the board that considered the officer or former officer prior to the consideration of the special selection board; and

(B) to incur no additional failure of selection for promotion as a result of the action of the special selection board.

(c) REQUIREMENTS FOR SPECIAL SELECTION BOARDS.—Each special selection board convened under this section shall—

(1) be composed in accordance with section 2107 and the members of the board shall be required to swear the oaths described in section 2109;

(2) consider the record of an applicable officer or former officer as that record, if corrected, would have appeared to the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board and that record shall be compared with a sampling of the records of—

(A) those officers of the same grade who were recommended for promotion by such prior selection board; and

(B) those officers of the same grade who were not recommended for promotion by such prior selection board; and

(3) submit to the Secretary a written report in a manner consistent with sections 2117 and 2118.

(d) APPOINTMENT OF OFFICERS RECOMMENDED FOR PROMOTION.—

(1) IN GENERAL.—An officer or former officer whose name is placed on a promotion list as a result of the recommendation of a special selection board convened under this section shall be appointed, as soon as practicable, to the next higher grade in accordance with the law and policies that would have been applicable to the officer or former officer had the officer or former officer been recommended for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(2) EFFECT.—An officer or former officer who is promoted to the next higher grade as a result of the recommendation of a special selection board convened under this section shall have, upon such promotion, 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 promotion list as the officer or former officer would have had if the officer or former officer had been recommended for promotion to that grade by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(3) RECORD CORRECTION.—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 eligible for promotion or a former officer whose name was referred to the board for consideration, the Secretary may act under section 1552 of title 10 to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from the officer or former officer not being selected for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(e) APPLICATION PROCESS AND TIME LIMITS.—The Secretary shall issue regulations regarding the process by which an officer or former officer may apply to have a matter considered by a special selection board convened under this section, including time limits related to such applications.

(f) LIMITATION OF OTHER JURISDICTION.—No official or court of the United States shall have authority or jurisdiction over any claim based in any way on the failure of an officer or former officer to be selected for promotion by a selection board convened under section 2106, until—

(1) the claim has been referred to a special selection board convened under this section and acted upon by that board; or

(2) the claim has been rejected by the Secretary without consideration by a special selection board convened under this section.

(g) JUDICIAL REVIEW.—

(1) IN GENERAL.—A court of the United States may review—

(A) a decision of the Secretary not to convene a special selection board under this section to determine if the court finds that the decision of the Secretary was arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law; and

(B) an action of a special selection board under this section to determine if the court finds that the action of the special selection board was contrary to law or involved material error of fact or material administrative error.

(2) REMAND AND RECONSIDERATION.—If, with respect to a review under paragraph (1), a court makes a finding described in subparagraph (A) or (B) of that paragraph, the court shall remand the case to the Secretary and the Secretary shall provide the applicable officer or former officer consideration by a new special selection board convened under this section.

(h) DESIGNATION OF BOARDS.—The Secretary may designate a selection board convened under

section 2106 as a special selection board convened under this section. A selection board so designated may function in the capacity of a selection board convened under section 2106 and a special selection board convened under this section.

(Added Pub. L. 112-213, title II, §208(a), Dec. 20, 2012, 126 Stat. 1546, §263; renumbered §2120 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-282, §112(b), renumbered section 263 of this title as this section.

Subsec. (a)(1)(A). Pub. L. 115-282, §123(b)(2), substituted “section 2106” for “section 251”.

Subsec. (b)(1). Pub. L. 115-282, §123(b)(2), substituted “section 2106” for “section 251” in introductory provisions.

Subsec. (c)(1). Pub. L. 115-282, §123(b)(2), substituted “section 2107” for “section 252” and “section 2109” for “section 254”.

Subsec. (c)(3). Pub. L. 115-282, §123(b)(2), substituted “sections 2117 and 2118” for “sections 260 and 261”.

Subsec. (f). Pub. L. 115-282, §123(b)(2), substituted “section 2106” for “section 251” in introductory provisions.

Subsec. (h). Pub. L. 115-282, §123(b)(2), substituted “section 2106” for “section 251” in two places.

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EFFECTIVE DATE

Section effective Dec. 20, 2012, with provision for convening a special selection board for certain errors occurring on or after the date that is 1 year before Dec. 20, 2012, see section 208(e)(1) of Pub. L. 112-213, set out as an Effective Date of 2012 Amendment note under section 2118 of this title.

§ 2120a. Special selection review boards

(a) IN GENERAL.—(1) If the Secretary determines that a person recommended by a promotion board for promotion to a grade at or below the grade of rear admiral is the subject of credible information of an adverse nature, including any substantiated adverse finding or conclusion described in section 2115(a)(3) 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 to the President or the Senate, as applicable, or included on a promotion list under section 2121 of this title.

(b) CONVENING.—(1) Any special selection review board convened under this section shall be