

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.

### Statutory Notes and Related Subsidiaries

#### 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

convened in accordance with the provisions of section 2120(c) 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 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 2115 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 2115(a)(3) 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 section 2115 of this title.

(3)(A) Before information on a person described in paragraph (1)(B) is furnished to a special selection review board for purposes of this section, the Secretary 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 a person 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 2115(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 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 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 a written report, signed by each member of the board, containing the name of each person whose recommendation for promotion it recommends for sustainment 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 2117(a) 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 2106 of this title.

(f) APPOINTMENT OF PERSONS.—(1) If the report of a special selection review board convened under this section recommends the sustainment 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 2121 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 active-duty list as the person would have had pursuant to the original recommendation for promotion of the promotion board concerned.

(g) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(h) PROMOTION BOARD DEFINED.—In this section, the term “promotion board” means a selection board convened by the Secretary under section 2106 of this title.

(Added Pub. L. 117-263, div. K, title CXII, §11245(b)(1), Dec. 23, 2022, 136 Stat. 4043.)

### § 2121. Promotions; appointments

(a) When the report of a board convened to recommend officers for promotion has been approved by the President, the Secretary shall place the names of all officers selected and approved on a list of selectees in the order of their seniority on the active duty promotion list. The names of all officers approved by the President and recommended by the board to be placed at the top of the list of selectees shall be placed at the top of the list of selectees in the order of seniority on the active duty promotion list.

(b) Officers on the list of selectees may be promoted by appointment in the next higher grade to fill vacancies in the authorized active duty strength of the grade as determined under section 2103 of this title after officers on any previous list of selectees for that grade have been promoted. Officers shall be promoted in the order that their names appear on the list of selectees. The date of rank of an officer promoted under this subsection shall be the date of his appointment in that grade.

(c) An officer serving on active duty in the grade of ensign may, if found fully qualified for promotion in accordance with regulations prescribed by the Secretary, be promoted to the grade of lieutenant (junior grade) by appointment after he has completed twelve months' active service in grade. The date of rank of an officer promoted under this subsection shall be the date of his appointment in the grade of lieutenant (junior grade) as specified by the Secretary.

(d) When a vacancy in the grade of rear admiral occurs, the senior rear admiral (lower half) serving on the active duty promotion list shall be appointed by the President, by and with the advice and consent of the Senate, to fill the vacancy. The appointment shall be effective on the date the vacancy occurred.

(e) Appointments of regular officers under this section shall be made by the President, by and with the advice and consent of the Senate except that advice and consent is not required for appointments under this section in the grade of lieutenant (junior grade) or lieutenant. Appointments of Reserve officers shall be made as prescribed in section 12203 of title 10.

(f)(1) The promotion of an officer may be delayed without prejudice if any of the following applies:

(A) The officer is under investigation or proceedings of a court-martial or a board of officers are pending against the officer.

(B) A criminal proceeding in a Federal or State court is pending against the officer.

(C) The Secretary determines that credible information of an adverse nature, including a substantiated adverse finding or conclusion described in section 2115(a)(3), with respect to the officer will result in the convening of a special selection review board under section 2120a of this title to review the officer and recommend whether the recommendation for promotion of the officer should be sustained.

(2)(A) Subject to subparagraph (B), a promotion may be delayed under this subsection until, as applicable—

(i) the completion of the investigation or proceedings described in subparagraph (A);

(ii) a final decision in the proceeding described in subparagraph (B) is issued; or

(iii) the special selection review board convened under section 2120a of this title issues recommendations with respect to the officer.

(B) Unless the Secretary determines that a further delay is necessary in the public interest, a promotion may not be delayed under this subsection for more than one year after the date the officer would otherwise have been promoted.

(3) An officer whose promotion is delayed under this subsection and who is subsequently promoted shall be given the date of rank and position on the active duty promotion list in the grade to which promoted that he would have held had his promotion not been so delayed.

(Added Pub. L. 88-130, §1(10)(C), Sept. 24, 1963, 77 Stat. 181, §271; amended Pub. L. 91-278, §1(8), June 12, 1970, 84 Stat. 305; Pub. L. 97-417, §2(5), Jan. 4, 1983, 96 Stat. 2085; Pub. L. 99-145, title V, §514(c)(1), Nov. 8, 1985, 99 Stat. 629; Pub. L. 101-225, title II, §203(2), Dec. 12, 1989, 103 Stat. 1911; Pub. L. 103-337, div. A, title XVI, §1677(b)(2), Oct. 5, 1994, 108 Stat. 3020; Pub. L. 107-295, title III, §313(3), Nov. 25, 2002, 116 Stat. 2103; renumbered §2121 and amended Pub. L. 115-282, title I, §§112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240; Pub. L. 117-263, div. K, title CXII, §11245(d), Dec. 23, 2022, 136 Stat. 4046.)

### Editorial Notes

#### AMENDMENTS

2022—Subsec. (f). Pub. L. 117-263 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “The promotion of an officer who is under investigation or against whom proceedings of a court-martial or a board of officers are pending may be delayed without prejudice by the Secretary until completion of the investigation or proceedings. However, unless the Secretary determines that a further delay is necessary in the public interest, a promotion may not be delayed under this subsection for more than one year after the date the officer would otherwise have been promoted. An officer whose promotion is delayed under this subsection and who is subsequently promoted shall be given the date of rank and position on the active duty promotion list in the grade to which promoted that he would have held had his promotion not been so delayed.”

2018—Pub. L. 115-282, §112(b), renumbered section 271 of this title as this section.

Subsec. (b). Pub. L. 115-282, §123(b)(2), substituted “section 2103” for “section 42”.

2002—Subsec. (a). Pub. L. 107-295 inserted at end “The names of all officers approved by the President and rec-