

officers serving on active duty but not on the active-duty list, or members of the Ready Reserve” for “retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board” and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97-22, §4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97-22, §4(a)(4), inserted “convened under section 611(a) of this title” after “selection boards”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title V, §504(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any selection board convened under section 611(a) of title 10, United States Code, on or after August 1, 1981.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 406(f) of Pub. L. 99-433 provided that: “The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

§ 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2851.)

§ 613a. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.—The proceedings of a selection board convened under section 573, 611, or 628 of this title may not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5.

(b) PROHIBITED USES OF BOARD DISCUSSIONS, DELIBERATIONS, NOTES, AND RECORDS.—The discussions and deliberations of a selection board described in subsection (a) and any written or documentary record of such discussions and deliberations—

- (1) are immune from legal process;
- (2) may not be admitted as evidence; and
- (3) may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

(c) APPLICABILITY.—This section applies to all selection boards convened under section 573, 611, or 628 of this title, regardless of the date on which the board was convened.

(Added Pub. L. 109-364, div. A, title V, §547(a)(1), Oct. 17, 2006, 120 Stat. 2215; amended Pub. L.

111-383, div. A, title V, §503(a), Jan. 7, 2011, 124 Stat. 4207.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383, §503(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The proceedings of a selection board convened under section 611 this title may not be disclosed to any person not a member of the board.”

Subsec. (b). Pub. L. 111-383, §503(a)(2), substituted “Notes, and Records” for “and Records” in heading.

Subsec. (c). Pub. L. 111-383, §503(a)(3), added subsec. (c).

EFFECTIVE DATE

Pub. L. 109-364, div. A, title V, §547(c), Oct. 17, 2006, 120 Stat. 2216, provided that: “Section 613a of title 10, United States Code, as added by subsection (a), shall apply with respect to the proceedings of all selection boards convened under section 611 of that title, including selection boards convened before the date of the enactment of this Act [Oct. 17, 2006]. Section 14104 of such title, as amended by subsection (b), shall apply with respect to the proceedings of all selection boards convened under section 14101 of that title, including selection boards convened before the date of the enactment of this Act.”

§ 614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than the day before the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 97-22, §4(b), July 10, 1981, 95 Stat. 126; Pub. L. 102-190, div. A, title V, §504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 109-163, div. A, title V, §505(a), Jan. 6, 2006, 119 Stat. 3227.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163 inserted “the day before” after “not later than” in first sentence.

1991—Pub. L. 102-190 struck out “; communications with boards” after “selection boards” in section catchline.

1981—Subsec. (a). Pub. L. 97-22 substituted “which shall include the convening date of the board” for “the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board,”.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, §505(c), Jan. 6, 2006, 119 Stat. 3227, provided that: “The amendments made by this section [amending this section and section 14106 of this title] shall take effect on March 1, 2006, and shall apply with respect to selection boards convened on or after that date.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102-190, set out as a note under section 615 of this title.

§ 615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer’s official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, shall be furnished to the selection board in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(4) Information provided to a selection board in accordance with paragraphs (2) and (3) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio

or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the selection board.

(5) Paragraphs (2), (3), and (4) do not apply to the furnishing of appropriate administrative processing information to the selection board by administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(6) Information furnished to a selection board that is described in subparagraph (B), (C), or (D) of paragraph (2), or in paragraph (3), may not be furnished to a later selection board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2) or (3), as applicable.

(7)(A) Before information described in paragraph (2)(B) or (3) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the selection board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished with an appropriate summary of the information.

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint