

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

Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of the Navy, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 99-433, title IV, §402(b), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100-456, div. A, title V, §501(a), Sept. 29, 1988, 102 Stat. 1965; Pub. L. 101-189, div. A, title V, §519, Nov. 29, 1989, 103 Stat. 1444; Pub. L. 102-190, div. A, title V, §504(a)(1), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102-484, div. A, title X, §1052(7), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109-163, div. A, title V, §506(a), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 111-383, div. A, title V, §522(b), Jan. 7, 2011, 124 Stat. 4215.)

AMENDMENTS

2011—Subsecs. (b)(5), (c). Pub. L. 111-383 substituted “of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers” for “in joint duty assignments of officers who are serving, or have served, in such assignments”.

2006—Subsec. (a)(3). Pub. L. 109-163, §506(a)(1)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 109-163, §506(a)(2)(A), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Pub. L. 109-163, §506(a)(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109-163, §506(a)(2)(B), substituted “, (3), and (4)” for “and (3)”.

Pub. L. 109-163, §506(a)(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 109-163, §506(a)(2)(C)(i), inserted “, or in paragraph (3),” after “paragraph (2)” in introductory provisions.

Pub. L. 109-163, §506(a)(1)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(B). Pub. L. 109-163, §506(a)(2)(C)(ii), inserted “or (3), as applicable” before period at end.

Subsec. (a)(7). Pub. L. 109-163, §506(a)(1)(A), redesignated par. (6) as (7).

Subsec. (a)(7)(A). Pub. L. 109-163, §506(a)(2)(D), inserted “or (3)” after “paragraph (2)(B)” in introductory provisions.

1992—Subsec. (b)(5). Pub. L. 102-484, §1052(7)(A), substituted “subsection (c)” for “subsection (b)”.

Subsec. (d). Pub. L. 102-484, §1052(7)(B), substituted “subsection (b)” for “subsection (a)”.

1991—Pub. L. 102-190 added subsec. (a) and redesignated former subsecs. (a) to (d) as (b) to (e), respectively.

1989—Subsec. (d). Pub. L. 101-189 added subsec. (d).

1988—Subsec. (a)(4). Pub. L. 100-456, §501(a)(1), added cl. (4) and struck out former cl. (4) which read as follows: “information relating to the needs of the armed force concerned for officers having particular skills;”.

Subsec. (c). Pub. L. 100-456, §501(a)(2), added subsec. (c).

1986—Pub. L. 99-433 designated existing provisions as subsec. (a), added par. (5), redesignated former par. (5) as (6), and added subsec. (b).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, §506(c), Jan. 6, 2006, 119 Stat. 3228, provided that: “The amendments made by this section [amending this section and section 14107 of this title] shall take effect on October 1, 2006, and shall apply with respect to promotion selection boards convened on or after that date.”

EFFECTIVE DATE OF 1991 AMENDMENT

Section 504(e) of Pub. L. 102-190 provided that: “The amendments made by this section [amending this section and sections 614, 616, 618, and 619 of this title] shall apply to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 501(e) of Pub. L. 100-456 provided that: “The amendments made by this section [amending this section and sections 616 to 618 of this title] shall take effect 60 days after the date of the enactment of this Act [Sept. 29, 1988] and shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after that effective date.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99-433, set out as a note under section 612 of this title.

§ 616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competi-