

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 1558 of this title and amending this section] shall apply with respect to any proceeding pending on or after the date of the enactment of this Act [Dec. 28, 2001] without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date.

“(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

#### RATIFICATION OF CODIFIED PRACTICE

Pub. L. 105-261, div. A, title V, §501(f), Oct. 17, 1998, 112 Stat. 2002, provided that the consideration by a special selection board convened under this section before Oct. 17, 1998, of a person who, at the time of consideration, had been a retired officer or former officer of the Armed Forces (including a deceased retired or former officer) was ratified.

### § 629. Removal from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) REMOVAL DUE TO SENATE NOT GIVING ADVICE AND CONSENT.—If, after consideration of a list of officers approved for promotion by the President to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c) REMOVAL AFTER 18 MONTHS.—(1) If an officer whose name is on a list of officers approved for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate is not appointed to that grade under such section during the officer's promotion eligibility period, the officer's name shall be removed from the list unless as of the end of such period the Senate has given its advice and consent to the appointment.

(2) Before the end of the promotion eligibility period with respect to an officer under paragraph (1), the President may extend that period for purposes of paragraph (1) by an additional 12 months.

(3) In this subsection, the term “promotion eligibility period” means, with respect to an officer whose name is on a list of officers approved

for promotion under section 624(a) of this title to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate, the period beginning on the date on which the list is so approved and ending on the first day of the eighteenth month following the month during which the list is so approved.

(d) ADMINISTRATIVE REMOVAL.—Under regulations prescribed by the Secretary concerned, if an officer on the active-duty list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter, but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board.

(e) CONTINUED ELIGIBILITY FOR PROMOTION.—(1) An officer whose name is removed from a list under subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, or if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2860; amended Pub. L. 109-364, div. A, title V, §515(a), Oct. 17, 2006, 120 Stat. 2185; Pub. L. 110-181, div. A, title X, §1063(a)(2), Jan. 28, 2008, 122 Stat. 321; Pub. L. 111-383, div. A, title V, §504(a), Jan. 7, 2011, 124 Stat. 4208.)

#### AMENDMENTS

2011—Subsecs. (d), (e). Pub. L. 111-383 added subsec. (d) and redesignated former subsec. (d) as (e).

2008—Subsec. (d)(1). Pub. L. 110-181 inserted comma after “(a)”.

2006—Subsec. (a). Pub. L. 109-364, §515(a)(4)(A), inserted heading.

Subsec. (b). Pub. L. 109-364, §515(a)(1), inserted heading and inserted “to a grade for which appointment is required by section 624(c) of this title to be made by and with the advice and consent of the Senate” after “the President”.

Subsec. (c). Pub. L. 109-364, §515(a)(2)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109-364, §515(a)(2)(A), (4)(B), redesignated subsec. (c) as (d) and inserted heading.

Subsec. (d)(1). Pub. L. 109-364, §515(a)(3), substituted “(b), or (c)” for “or (b)”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, §515(c), Oct. 17, 2006, 120 Stat. 2187, provided that: “The amendments made by this section [amending this section and section 14310 of this title] shall apply to any promotion list approved by the President after January 1, 2007.”

## DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) to remove name of any officer from a promotion list to any grade below commodore or brigadier general delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(b), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

**§ 630. Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)**

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any officer on the active-duty list who—

(A) has less than six years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in paragraph (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98-525, title XIV, §1405(11), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 107-107, div. A, title V, §505(d)(2), (4)(A), Dec. 28, 2001, 115 Stat. 1088; Pub. L. 108-136, div. A, title V, §505(b), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 110-181, div. A, title V, §503(a)(1), (2), Jan. 28, 2008, 122 Stat. 95.)

## AMENDMENTS

2008—Pub. L. 110-181, §503(a)(2), substituted “six years” for “five years” in section catchline.

Par. (1)(A). Pub. L. 110-181, §503(a)(1), substituted “six years” for “five years”.

2003—Par. (2). Pub. L. 108-136 substituted “paragraph” for “clause”.

2001—Pub. L. 107-107, §505(d)(4)(A), struck out “regular” before “commissioned officers” in section catchline.

Par. (1). Pub. L. 107-107, §505(d)(2), struck out “regular” before “officer” in introductory provisions and before “grade of first lieutenant” in subpar. (B).

1984—Par. (2). Pub. L. 98-525 substituted “18-month” for “eighteen-month”.

**§ 631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade)**

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of first lieutenant and has failed of selection for promotion to the grade of captain for the second time, and each officer of the Navy on the active-duty list who holds the grade of lieutenant (junior grade) and has failed of selection for promotion to the grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under paragraph (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(d) For the purposes of this chapter, an officer of the Army, Air Force, or Marine Corps who holds the grade of first lieutenant, and an officer of the Navy who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 624(a)(3) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98-525, title V, §525(c), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107-107, div. A, title V, §505(a)(2), (d)(3), (4)(B), Dec. 28, 2001, 115 Stat. 1086, 1088; Pub. L. 108-136, div. A, title V, §505(b), Nov. 24, 2003, 117 Stat. 1457.)

## AMENDMENTS

2003—Subsec. (a)(3). Pub. L. 108-136 substituted “paragraph” for “clause”.

2001—Pub. L. 107-107, §505(d)(4)(B), struck out “regular” before “first lieutenants” in section catchline.

Subsec. (a). Pub. L. 107-107, §505(d)(3), in introductory provisions, substituted “Army, Air Force, or Marine Corps on the active-duty list” for “Regular Army, Regular Air Force, or Regular Marine Corps” and “Navy on the active-duty list” for “Regular Navy” and struck out “regular” before “grade” wherever appearing.

Subsec. (d). Pub. L. 107-107, §505(a)(2), added subsec. (d).

1984—Subsec. (c). Pub. L. 98-525 added subsec. (c).