

Records, as the case may be, is provided a copy of all correspondence and communications (including summaries of verbal communications) to or from the agency or board, or a member of the staff of the agency or board, with an entity or person outside the agency or board that pertain directly to the applicant's case or have a material effect on the applicant's case.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

- (1) Classified information.
- (2) Information the release of which is otherwise prohibited by law or regulation.
- (3) Any record previously provided to the applicant or known to be possessed by the applicant.
- (4) Any correspondence that is purely administrative in nature.
- (5) Any military record that is (or may be) provided to the applicant by the Secretary of the military department or other source.

(Added Pub. L. 105-261, div. A, title V, §543(a)(1), Oct. 17, 1998, 112 Stat. 2020.)

EFFECTIVE DATE

Pub. L. 105-261, div. A, title V, §543(b), Oct. 17, 1998, 112 Stat. 2021, provided that: "Section 1556 of title 10, United States Code, as added by subsection (a), shall apply with respect to correspondence and communications made 60 days or more after the date of the enactment of this Act [Oct. 17, 1998]."

§ 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) TEN-MONTH CLEARANCE PERCENTAGE.—Of the applications received by a Corrections Board during a period specified in the following table, the percentage on which final action by the Corrections Board must be completed within 10 months of receipt (other than for those applications considered suitable for administrative correction) is as follows:

For applications received during—	The percentage on which final Correction Board action must be completed within 10 months of receipt is—	
the period of fiscal years 2001 and 2002 ....		50
the period of fiscal years 2003 and 2004 ....		60
the period of fiscal years 2005, 2006, and 2007 .....		70
the period of fiscal years 2008, 2009, and 2010 .....		80
the period of any fiscal year after fiscal year 2010 .....		90.

(b) CLEARANCE DEADLINE FOR ALL APPLICATIONS.—Final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

(c) WAIVER AUTHORITY.—The Secretary of the military department concerned may exclude an individual application from the timeliness standards prescribed in subsections (a) and (b) if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this subsection may not be delegated.

(d) FAILURE TO MEET TIMELINESS STANDARDS NOT TO AFFECT ANY INDIVIDUAL APPLICATION.—

Failure of a Corrections Board to meet the applicable timeliness standard for any period of time under subsection (a) or (b) does not confer any presumption or advantage with respect to consideration by the board of any application.

(e) REPORTS ON FAILURE TO MEET TIMELINESS STANDARDS.—The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also specify the number of waivers granted under subsection (c) during that fiscal year.

(f) CORRECTIONS BOARD DEFINED.—In this section, the term "Corrections Board" means—

- (1) with respect to the Department of the Army, the Army Board for Correction of Military Records;
- (2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and
- (3) with respect to the Department of the Air Force, the Air Force Board for Correction of Military Records.

(Added Pub. L. 105-261, div. A, title V, §544(a), Oct. 17, 1998, 112 Stat. 2021; amended Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 108-375, div. A, title X, §1084(d)(12), Oct. 28, 2004, 118 Stat. 2062.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-375 substituted "Final" for "Effective October 1, 2002, final".

1999—Subsec. (e). Pub. L. 106-65 substituted "and the Committee on Armed Services" for "and the Committee on National Security".

§ 1558. Review of actions of selection boards: correction of military records by special boards; judicial review

(a) CORRECTION OF MILITARY RECORDS.—The Secretary of a military department may correct a person's military records in accordance with a recommendation made by a special board. Any such correction may be made effective as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person's military records.

(b) DEFINITIONS.—In this section:

- (1) SPECIAL BOARD.—(A) The term "special board" means a board that the Secretary of a military department convenes under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person.
- (B) Such term includes a board for the correction of military records convened under

section 1552 of this title, if designated as a special board by the Secretary concerned.

(C) Such term does not include a promotion special selection board convened under section 628 or 14502 of this title.

(2) SELECTION BOARD.—(A) The term “selection board” means a selection board convened under section 573(c), 580, 580a, 581, 611(b), 637, 638, 638a, 14101(b), 14701, 14704, or 14705 of this title, and any other board convened by the Secretary of a military department under any authority to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces.

(B) Such term does not include any of the following:

(i) A promotion board convened under section 573(a), 611(a), or 14101(a) of this title.

(ii) A special board.

(iii) A special selection board convened under section 628 of this title.

(iv) A board for the correction of military records convened under section 1552 of this title.

(3) INVOLUNTARILY BOARD-SEPARATED.—The term “involuntarily board-separated” means separated or retired from an armed force, or transferred to the Retired Reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board.

(c) RELIEF ASSOCIATED WITH CORRECTION OF CERTAIN ACTIONS.—(1) The Secretary of the military department concerned shall ensure that an involuntarily board-separated person receives relief under paragraph (2) or under paragraph (3) if the person, as a result of a correction of the person’s military records under subsection (a), becomes entitled to retention on or restoration to active duty or to active status in a reserve component.

(2)(A) A person referred to in paragraph (1) shall, with that person’s consent, be restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in that person’s armed force as the person would have had if the person had not been selected to be involuntarily board-separated as a result of an action the record of which is corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

(B) Nothing in subparagraph (A) may be construed to permit a person to be on active duty or in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component if the person had not been selected to be involuntarily board-separated in an action of a selection board the record of which is corrected under subsection (a).

(3) If an involuntarily board-separated person referred to in paragraph (1) does not consent to a restoration of status, rights, and entitlements under paragraph (2), the Secretary concerned shall pay that person back pay and allowances (less appropriate offsets), and shall provide that person service credit, for the period—

(A) beginning on the date of the person’s separation, retirement, or transfer to the Retired Reserve or to inactive status in a reserve component, as the case may be; and

(B) ending on the earlier of—

(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

(ii) the date on which the person would otherwise have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component, as the case may be.

(d) FINALITY OF UNFAVORABLE ACTION.—If a special board makes a recommendation not to correct the military records of a person regarding action taken in the case of that person on the basis of a previous report of a selection board, the action previously taken on that report shall be considered as final as of the date of the action taken on that report.

(e) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (f), other than to paragraph (4)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person’s case by a special board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(f) JUDICIAL REVIEW.—(1) A person seeking to challenge an action or recommendation of a selection board, or an action taken by the Secretary of the military department concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless the action or recommendation has first been considered by a special board under this section or the Secretary concerned has denied the convening of such a board for such consideration.

(2)(A) A court of the United States may review a determination by the Secretary of a military department not to convene a special board in the case of any person. In any such case, the court may set aside the Secretary’s determination only if the court finds the determination to be—

(i) arbitrary or capricious;

(ii) not based on substantial evidence;

(iii) a result of material error of fact or material administrative error; or

(iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special board, it shall remand the case to the Secretary concerned, who shall provide for consideration by a special board.

(3) A court of the United States may review a recommendation of a special board or an action

of the Secretary of the military department concerned on the report of a special board. In any such case, a court may set aside the action only if the court finds that the recommendation or action was—

- (A) arbitrary or capricious;
- (B) not based on substantial evidence;
- (C) a result of material error of fact or material administrative error; or
- (D) otherwise contrary to law.

(4)(A) If, six months after receiving a complete application for consideration by a special board in any case, the Secretary concerned has not convened a special board and has not denied consideration by a special board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied consideration of the case by a special board.

(B) If, six months after the convening of a special board in any case, the Secretary concerned has not taken final action on the report of the special board, the Secretary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (e), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(g) EXISTING JURISDICTION.—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(Added Pub. L. 107-107, div. A, title V, §503(a)(1), Dec. 28, 2001, 115 Stat. 1080.)

#### EFFECTIVE DATE

Section applicable with respect to any proceeding pending on or after 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, but not applicable with respect to any action commenced in a court of the United States before Dec. 28, 2001, see section 503(c) of Pub. L. 107-107, set out as an Effective Date of 2001 Amendment note under section 628 of this title.

#### § 1559. Personnel limitation

(a) LIMITATION.—Before December 31, 2016, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

(1) the Secretary submits to Congress a report that—

(A) describes the reduction proposed to be made;

(B) provides the Secretary's rationale for that reduction; and

(C) specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

(2) a period of 90 days has elapsed after the date on which the report is submitted.

(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of January 1, 2002; and

(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term “service review agency” means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 107-314, div. A, title V, §552(a), Dec. 2, 2002, 116 Stat. 2552; amended Pub. L. 108-375, div. A, title V, §581, Oct. 28, 2004, 118 Stat. 1928; Pub. L. 110-417, [div. A], title V, §593, Oct. 14, 2008, 122 Stat. 4475; Pub. L. 111-383, div. A, title V, §533(b), Jan. 7, 2011, 124 Stat. 4216; Pub. L. 112-239, div. A, title V, §520, title X, §1076(b)(2), Jan. 2, 2013, 126 Stat. 1722, 1949.)

#### AMENDMENTS

2013—Subsec. (a). Pub. L. 112-239, §1076(b)(2), made technical amendment to directory language of Pub. L. 111-383. See 2011 Amendment note below.

Pub. L. 112-239, §520, substituted “December 31, 2016” for “December 31, 2013”.

2011—Subsec. (a). Pub. L. 111-383, as amended by Pub. L. 112-239, §1076(b)(2), substituted “December 31, 2013” for “December 31, 2010” in introductory provisions.

2008—Subsec. (a). Pub. L. 110-417 substituted “December 31, 2010” for “October 1, 2008” in introductory provisions.

2004—Subsec. (a). Pub. L. 108-375 substituted “Before October 1, 2008,” for “During fiscal years 2003, 2004, and 2005,”.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-239, div. A, title X, §1076(b), Jan. 2, 2013, 126 Stat. 1949, provided that the amendment made by section 1076(b)(2) is effective Jan. 7, 2011, and as if included in Pub. L. 111-383 as enacted.

#### CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.	
1561.	Complaints of sexual harassment: investigation by commanding officers.
1561a.	Civilian orders of protection: force and effect on military installations.
1562.	Database on domestic violence incidents.
1563.	Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review.
1564.	Security clearance investigations.
1564a.	Counterintelligence polygraph program.