

cerned, in his discretion, may appoint as a member of the board a retired officer of that competitive category who is in the same armed force as the officers under consideration by the board who holds a higher grade than the grade of the officers under consideration.

(d) PROHIBITION OF SERVICE ON CONSECUTIVE PROMOTION BOARDS.—No officer may be a member of two successive promotion boards convened under section 14101(a) of this title for the consideration of officers of the same competitive category and grade if the second of the two boards is to consider any officer who was considered and not recommended for promotion to the next higher grade by the first of the two boards.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2924; amended Pub. L. 108-136, div. A, title V, §511(b)(2), Nov. 24, 2003, 117 Stat. 1459.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(b), (c), 5893(a), (b), and 8362(b), (c) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136 substituted “Selection boards convened under section 14101(b) of this title” for “Continuation boards”.

§ 14103. Oath of members

Each member of a selection board convened under section 14101 of this title shall take an oath to perform the duties of a member of the board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the member’s armed force.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(d), 5894, and 8362(d) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

§ 14104. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.—The proceedings of a selection board convened under section 14101 or 14502 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 14101 or

14502 of this title, regardless of the date on which the board was convened.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925; amended Pub. L. 109-364, div. A, title V, §547(b), Oct. 17, 2006, 120 Stat. 2216; Pub. L. 111-383, div. A, title V, §503(c), Jan. 7, 2011, 124 Stat. 4208.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(e) of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383, §503(c)(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 14101 of this title may not be disclosed to any person not a member of the board.”

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

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

2006—Pub. L. 109-364 amended section catchline and text generally. Prior to amendment, text read as follows: “Except as otherwise authorized or required by law, the proceedings of a selection board convened under section 14101 of this title may not be disclosed to any person not a member of the board.”

EFFECTIVE DATE OF 2006 AMENDMENT

This section, as amended by Pub. L. 109-364, applicable with respect to the proceedings of all selection boards convened under section 14101 of this title, including selection boards convened before Oct. 17, 2006, see section 547(c) of Pub. L. 109-364, set out as an Effective Date note under section 613a of this title.

§ 14105. Notice of convening of promotion board

(a) REQUIRED NOTICE.—At least 30 days before a promotion board is convened under section 14101(a) of this title to consider officers in a grade and competitive category for promotion to the next higher grade, the Secretary concerned shall either (1) notify in writing the officers eligible for consideration by the board for promotion regarding the convening of the board, or (2) issue a general written notice to the armed force concerned regarding the convening of the board.

(b) CONTENT OF NOTICE.—A notice under subsection (a) shall include the date on which the board is to convene and (except in the case of a vacancy promotion board) 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 notice.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14106. Communication with board by officers under consideration

Subject to regulations prescribed by the Secretary of the military department concerned, an officer eligible for consideration by a promotion board convened under section 14101(a) of this title who is in the promotion zone or above the promotion zone, or who is to be considered by a vacancy promotion board, may send a written communication to the board calling attention to any matter concerning the officer which the of-

ficer considers important to the officer's case. Any such communication shall be sent so as to arrive not later than the day before the date on which the board convenes. The board shall give consideration to any timely communication under this section.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2925; amended Pub. L. 109-163, div. A, title V, §505(b), Jan. 6, 2006, 119 Stat. 3227.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(f), 5900, and 8362(f) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

AMENDMENTS

2006—Pub. L. 109-163 inserted “the day before” after “not later than”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 effective Mar. 1, 2006, and applicable with respect to selection boards convened on or after that date, see section 505(c) of Pub. L. 109-163, set out as a note under section 614 of this title.

§ 14107. Information furnished by the Secretary concerned to promotion boards

(a) INTEGRITY OF THE PROMOTION SELECTION BOARD PROCESS.—(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(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 promotion 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 14106 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 promotion 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 promotion board.

(5) Paragraphs (2), (3), and (4) do not apply to the furnishing of appropriate administrative processing information to the promotion board by an 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 promotion board that is described in subparagraph (B), (C), or (D) of paragraph (2), or in paragraph (3), may not be furnished to a later promotion 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 promotion 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 an appropriate summary of the information.

(b) INFORMATION TO BE FURNISHED.—The Secretary of the military department concerned shall furnish to a promotion board convened under section 14101(a) of this title the following:

(1) In the case of a mandatory promotion board, the maximum number (as determined in accordance with section 14307 of this title) of officers in each competitive category under consideration that the board is authorized to recommend for promotion to the next higher grade.

(2) The name of each officer in each competitive category under consideration who is 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