

having particular skills, including (except in the case of a vacancy promotion board) guidelines or information relating to either a minimum number or a maximum number of officers with particular skills within a competitive category.

(5) Such other information or guidelines as the Secretary concerned may determine to be necessary to enable the board to perform its functions.

(c) LIMITATION ON MODIFYING FURNISHED INFORMATION.—Information or guidelines furnished to a selection board under subsection (a) may not be modified, withdrawn, or supplemented after the board submits its report to the Secretary of the military department concerned pursuant to section 14109(a) of this title. However, in the case of a report returned to a board pursuant to section 14110(a) 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.

(d) OFFICERS IN HEALTH-PROFESSIONS COMPETITIVE CATEGORIES.—The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a promotion board convened under section 14101(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 officers of the Navy Reserve, 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. 103-337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2926; amended Pub. L. 109-163, div. A, title V, §§ 506(b), 515(b)(1)(QQ), Jan. 6, 2006, 119 Stat. 3227, 3234.)

#### PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in section 5895 of this title, prior to repeal by Pub. L. 103-337, § 1629(b)(2).

#### AMENDMENTS

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

Subsec. (a)(4). Pub. L. 109-163, § 506(b)(1)(A), (2)(A), redesignated par. (3) as (4) and substituted “paragraphs (2) and (3)” for “paragraph (2)”. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109-163, § 506(b)(1)(A), (2)(B), redesignated par. (4) as (5) and substituted “, (3), and (4)” for “and (3)”. Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 109-163, § 506(b)(1)(A), (2)(C)(i), redesignated par. (5) as (6) and inserted “, or in paragraph (3),” after “paragraph (2)” in introductory provisions. Former par. (6) redesignated (7).

Subsec. (a)(6)(B). Pub. L. 109-163, § 506(b)(2)(C)(ii), inserted “or (3), as applicable” after “paragraph (2)”.

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

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

Subsec. (d). Pub. L. 109-163, § 515(b)(1)(QQ), substituted “Navy Reserve” for “Naval Reserve”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 506(b) of Pub. L. 109-163 effective Oct. 1, 2006, and applicable with respect to promotion selection boards convened on or after that date, see section 506(c) of Pub. L. 109-163, set out as a note under section 615 of this title.

#### § 14108. Recommendations by promotion boards

(a) RECOMMENDATION OF BEST QUALIFIED OFFICERS.—A promotion board convened under section 14101(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board considers best qualified for promotion within each competitive category considered by the board or, in the case of a vacancy promotion board, among those officers considered to fill a vacancy. In determining those officers who are best qualified for promotion, the board shall give 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 14107 of this title).

(b) ACTIONS REQUIRED.—A promotion board convened under section 14101(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board;

(2) a majority of the members of the board finds that the officer is fully qualified for promotion; and

(3) a majority of the members of the board, after consideration by all members of the board of any adverse information about the officer that is provided to the board under section 14107 of this title, finds that the officer is among the officers best qualified for promotion to meet the needs of the armed force concerned consistent with the requirement of exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable.

(c) BOARD RECOMMENDATION REQUIRED FOR PROMOTION.—Except as otherwise provided by law, an officer on the reserve active-status list may not be promoted to a higher grade under chapter 1405 of this title unless the officer is considered and recommended for promotion to that grade by a promotion board convened under section 14101(a) of this title (or by a special selection board convened under section 14502 of this title).

(d) DISCLOSURE OF BOARD RECOMMENDATIONS.—The recommendations of a promotion board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 14109 of this title, is signed by each member of the board.

(e) PROHIBITION OF COERCION AND UNAUTHORIZED INFLUENCE OF ACTIONS OF BOARD MEMBERS.—The Secretary convening a promotion board under section 14101(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a promotion board or any member of a promotion board in the formulation of the board's recommendations.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2928; amended Pub. L. 109-364, div. A, title V, §512(b), Oct. 17, 2006, 120 Stat. 2184.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(e), 5893(c), 5896, and 8362(e) of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (b)(2), (c)(1).

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-364, §512(b)(1), substituted "Actions" for "Majority" in heading.

Subsec. (b)(3). Pub. L. 109-364, §512(b)(2)-(4), added par. (3).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-364 effective Oct. 17, 2006, and applicable with respect to selection boards convened on or after that date, see section 512(c) of Pub. L. 109-364, set out as a note under section 616 of this title.

### § 14109. Reports of promotion boards: in general

(a) REPORT OF OFFICERS RECOMMENDED FOR PROMOTION.—Each promotion board convened under section 14101(a) of this title shall submit to the Secretary of the military department concerned a report in writing containing a list of the names of the officers recommended by the board for promotion. The report shall be signed by each member of the board.

(b) CERTIFICATION.—Each report under subsection (a) shall include a certification—

(1) that the board has carefully considered the record of each officer whose name was furnished to the board; and

(2) that, in the case of a promotion board convened under section 14101(a) of this title, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 14107 of this title) among those officers whose names were furnished to the selection board.

(c) SHOW-CAUSE RECOMMENDATIONS.—(1) A promotion board convened under section 14101(a) of this title shall include in its report to the Secretary concerned the name of any reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required to show cause for retention in an active status.

(2) If such a report names an officer as having a record which indicates that the officer should be required to show cause for retention, the Secretary concerned may provide for the review of the record of that officer as provided under regu-

lations prescribed under section 14902 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2928.)

#### PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 5897 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

### § 14110. Reports of promotion boards: review by Secretary

(a) REVIEW OF REPORT.—Upon receipt of the report of a promotion board submitted under section 14109(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title. Following that review, unless the Secretary concerned makes a determination as described in subsection (b), the Secretary shall submit the report as required by section 14111 of this title.

(b) RETURN OF REPORT FOR FURTHER PROCEEDINGS.—If, on the basis of a review of the report under subsection (a), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 14101(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 14109 of this title.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2929.)

#### PRIOR PROVISIONS

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

### § 14111. Reports of selection boards: transmittal to President

(a) TRANSMITTAL TO PRESIDENT.—The Secretary concerned, after final review of the report of a selection board under section 14110 of this title, shall submit the report with the Secretary's recommendations, to the Secretary of Defense for transmittal by the Secretary to the President for approval or disapproval. If the authority of the President to approve or disapprove the report of a promotion board is delegated to the Secretary of Defense, that authority may not be redelegated except to an official in the Office of the Secretary of Defense.

(b) REMOVAL OF NAME FROM BOARD REPORT.—(1) Except as provided in paragraph (2), the name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.