

a new oath upon appointment to a higher grade under this chapter.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2938.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3394 and 8394 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

#### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

### § 14310. Removal of officers from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

(b) REMOVAL FOR WITHHOLDING OF SENATE ADVICE AND CONSENT.—If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer 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 14308(a) of this title to a grade for which appointment is required by section 12203(a) 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 14308(a) of this title to a grade for which appointment is required by section 12203(a) 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 reserve active-status 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 or having been found qualified for Federal recognition in the higher grade under title 32, 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.—An officer whose name is removed from a list under

subsection (a), (b), or (c) continues to be eligible for consideration for promotion. If that officer is recommended for promotion by the next selection board convened for that officer's grade and competitive category and the officer is promoted, the Secretary of the military department concerned may, upon the promotion, grant the officer 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 reserve active-status list, as the officer would have had if the officer's name had not been removed from the list.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2938; amended Pub. L. 109-364, div. A, title V, §515(b), Oct. 17, 2006, 120 Stat. 2186; Pub. L. 110-181, div. A, title X, §1063(a)(16), Jan. 28, 2008, 122 Stat. 322; Pub. L. 111-383, div. A, title V, §504(b), title X, §1075(f)(7), Jan. 7, 2011, 124 Stat. 4208, 4376.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5905 of this title, prior to repeal by Pub. L. 103-337, §1629(b)(2).

#### AMENDMENTS

2011—Subsec. (d). Pub. L. 111-383, §504(b)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 111-383, §1075(f)(7), made technical amendment to directory language of Pub. L. 110-181, §1063(a)(16). See 2008 Amendment note below.

Pub. L. 111-383, §504(b)(1), redesignated subsec. (d) as (e).

2008—Subsec. (d). Pub. L. 110-181, §1063(a)(16), as amended by Pub. L. 111-383, §1075(f)(7), inserted comma after “(a)”.

2006—Subsec. (c). Pub. L. 109-364, §515(b)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 109-364, §515(b)(2), which directed amendment of par. (1) of subsec. (d) by substituting “(b), or (c)” for “or (b)”, was executed by amending text of subsec. (d), which does not contain any pars., to reflect the probable intent of Congress.

Pub. L. 109-364, §515(b)(1)(A), redesignated subsec. (c) as (d).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-364 applicable to any promotion list approved by the President after Jan. 1, 2007, see section 515(c) of Pub. L. 109-364, set out as a note under section 629 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### DELEGATION OF FUNCTIONS

For assignment of functions of President under subsec. (a) of this section, see section 1(d) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

Functions of President under subsec. (c)(2) of this section delegated to Secretary of Defense, with authority for Secretary to redelegate, see Ex. Ord. No. 13598, §§1(b), 2, Jan. 27, 2012, 77 F.R. 5371, set out as a note under section 301 of Title 3, The President.

#### REMOVALS FROM PROMOTION LIST

Pub. L. 103-337, div. A, title XVI, §1684(b), Oct. 5, 1994, 108 Stat. 3024, as amended by Pub. L. 104-106, div. A, title XV, §1501(a)(9), Feb. 10, 1996, 110 Stat. 495, provided that: “An action that was initiated before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2)

of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title) under the laws and regulations in effect before that date to remove the name of an officer from a promotion list or from a list of officers recommended or approved for promotion shall continue on and after such date as if such action had been initiated under section 14111(c) or 14310, as appropriate, of title 10, United States Code, as added by this title.”

**§ 14311. Delay of promotion: involuntary**

(a) DELAY DURING INVESTIGATIONS AND PROCEEDINGS.—(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer to a higher grade may be delayed if any of the following applies before the date on which the appointment would otherwise be made:

(A) Sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and the charges have not been disposed of.

(B) An investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer.

(C) A board of officers has been convened under section 14903 of this title to review the record of the officer.

(D) A criminal proceeding in a Federal or State court of competent jurisdiction is pending against the officer.

(E) Substantiated adverse information about the officer that is material to the decision to appoint the officer is under review by the Secretary of Defense or the Secretary concerned.

(2) If disciplinary action is not taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not separated by the Secretary of the military department concerned as the result of having been required to show cause for retention, if the officer is acquitted of the charges, or if, after a review of substantiated adverse information about the officer regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion, as the case may be, then (unless action to delay the officer's appointment to the higher grade has been taken under subsection (b)) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade and shall, upon promotion to the next higher grade, have 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 reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(b) DELAY FOR LACK OF QUALIFICATIONS.—Under regulations prescribed by the Secretary of Defense, the appointment of an officer to a high-

er grade may also be delayed if there is cause to believe that the officer has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or is mentally, physically, morally, or professionally unqualified to perform the duties of the grade to which selected. If it is later determined by a civilian official of the Department of Defense (not below the level of Secretary of a military department) that the officer is qualified for promotion to the higher grade and, after a review of adverse information regarding the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, the officer is determined to be among the officers best qualified for promotion to the higher grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), the list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade, and shall, upon promotion to that grade, have the same date of rank, the same effective date for pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(c) NOTICE TO OFFICER.—(1) The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) unless the officer is given written notice of the grounds for the delay. The preceding sentence does not apply if it is impracticable to give the officer written notice before the date on which the appointment to the higher grade would otherwise take effect, but in such a case the written notice shall be given as soon as practicable.

(2) An officer whose promotion is delayed under subsection (a) or (b) shall be given an opportunity to make a written statement to the Secretary of the military department concerned in response to the action taken. The Secretary shall give consideration to any such statement.

(d) MAXIMUM LENGTH OF DELAY IN PROMOTION.—The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) for more than six months after the date on which the officer would otherwise have been promoted unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against the officer in a Federal or State court of competent jurisdiction or more than 90 days after final action has been taken in any court-martial case against the officer. Except for court action, a promotion may not be delayed more than 18 months after the date on which the officer would otherwise have been promoted.

(e) DELAY BECAUSE OF LIMITATIONS ON OFFICER STRENGTH IN GRADE OR DUTIES TO WHICH ASSIGNED.—(1) Under regulations prescribed by the