

to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

**§ 623. Establishment of promotion zones**

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

**§ 624. Promotions: how made**

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list. A promotion list is considered to be established under

this section as of the date of the approval of the report of the selection board under the preceding sentence.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(3)(A) Except as provided in subsection (d), officers on the active-duty list in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the active-duty list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title upon the convening of such a board.

(E) If the Secretary of the military department concerned determines that one or more officers or former officers were not placed on an all-fully-qualified-list under this paragraph because of administrative error, the Secretary may prepare a supplemental all-fully-qualified-officers list containing the names of any such officers for approval in accordance with this paragraph.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such 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 chapter 60 of this title to review the record of the officer;

(D) a criminal proceeding in a Federal or State court is pending against the officer; or

(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.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, if the officer is acquitted of the charges brought against him, 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 an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) 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 active-duty list as he 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 active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary of Defense, the appointment of an officer under this section may also be delayed in any case in which 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 for which he was selected for promotion. 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 such 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 such grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall,

upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he 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 active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed 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 such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2857; amended Pub. L. 97-22, § 4(d), July 10, 1981, 95 Stat. 126; Pub. L. 97-295, § 1(8), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98-525, title V, § 526, Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107-107, div. A, title V, § 505(a)(1), (c)(2)(A), (d)(1), Dec. 28, 2001, 115 Stat. 1085, 1087, 1088; Pub. L. 107-314, div. A, title X, § 1062(a)(2), Dec. 2, 2002, 116 Stat. 2649; Pub. L. 109-364, div. A, title V, § 511(a), (d)(1), Oct. 17, 2006, 120 Stat. 2181, 2183; Pub. L. 110-181, div. A, title X, § 1063(c)(3), Jan. 28, 2008, 122 Stat. 322; Pub. L. 114-92, div. A, title V, § 502(a), Nov. 25, 2015, 129 Stat. 806.)

#### AMENDMENTS

2015—Subsec. (a)(3)(E). Pub. L. 114-92 added subpar. (E).

2008—Subsec. (d)(1). Pub. L. 110-181 amended directory language of Pub. L. 109-364, § 511(a)(2)(D)(i). See 2006 Amendment note below.

2006—Subsec. (a)(1). Pub. L. 109-364, § 511(d)(1), inserted at end “A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.”

Subsec. (d)(1). Pub. L. 109-364, § 511(a)(2)(D)(ii), inserted “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,” after “brought against him,” in concluding provisions.

Pub. L. 109-364, §511(a)(2)(D)(i), as amended by Pub. L. 110-181, struck out “or” after “chapter 60 of this title.”

Pub. L. 109-364, §511(a)(1), substituted “prescribed by the Secretary of Defense” for “prescribed by the Secretary concerned” in introductory provisions.

Subsec. (d)(1)(E). Pub. L. 109-364, §511(a)(2)(A)–(C), added subpar. (E).

Subsec. (d)(2). Pub. L. 109-364, §511(a)(3), in first sentence inserted “has not met the requirement for exemplary conduct set forth in section 3583, 5947, or 8583 of this title, as applicable, or” before “is mentally, physically,” and in second sentence substituted “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 such 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 such grade” for “If the Secretary concerned later determines that the officer is qualified for promotion to such grade”.

Pub. L. 109-364, §511(a)(1), substituted “prescribed by the Secretary of Defense” for “prescribed by the Secretary concerned”.

2002—Subsec. (d)(1). Pub. L. 107-314 substituted “paragraph (2)” for “subsection (d)(2)” in concluding provisions.

2001—Subsec. (a)(3). Pub. L. 107-107, §505(a)(1), added par. (3).

Subsec. (c). Pub. L. 107-107, §505(d)(1), inserted “, in the case of officers of the Army, Air Force, or Marine Corps,” after “captain” and “, in the case of officers of the Navy,” after “(junior grade) or lieutenant”.

Subsec. (d)(1). Pub. L. 107-107, §505(c)(2)(A)(i), inserted “(including an approved all-fully-qualified-officers list, if applicable)” after “retained on the promotion list” in concluding provisions.

Subsec. (d)(2). Pub. L. 107-107, §505(c)(2)(A)(ii), inserted “shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and” after “to such grade, the officer” in second sentence.

1984—Subsec. (d)(1), (2). Pub. L. 98-525 inserted provision for a determination by the Secretary concerned that the officer was unqualified for promotion for any part of the delay in the officer’s promotion, with the inserted provision that if the Secretary made such a determination, the Secretary could adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considered appropriate under the circumstances.

1982—Subsec. (d)(4). Pub. L. 97-295 substituted “this subsection” for “the subsection”.

1981—Subsec. (a)(1). Pub. L. 97-22, §4(d)(1)(A), struck out “or in the case of officers selected for promotion to the grade of first lieutenant or lieutenant (junior grade), when a list of officers selected for promotion is approved by the President,” after “by the President.”

Subsec. (a)(2). Pub. L. 97-22, §4(d)(1)(B), inserted provision that officers to be promoted to grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

Subsec. (c). Pub. L. 97-22, §4(d)(2), substituted “under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant” for “in the grade of first lieutenant or lieutenant (junior grade) under this section”.

Subsec. (d)(1). Pub. L. 97-22, §4(d)(3)(A), (B), substituted “Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed” for “The Secretary concerned may delay the appointment of an officer under this section” in provisions preceding subpar. (A) and, in provisions following subpar. (D), inserted “then unless action to delay an appointment has also been taken under subsection (d)(2)” after “as the case may be.”

Subsec. (d)(2). Pub. L. 97-22, §4(d)(3)(C), substituted “Under regulations prescribed by the Secretary con-

cerned, the appointment of an officer under this section may also be delayed in any case in which” for “The Secretary concerned may also delay the appointment of an officer to the next higher grade under this section in any case in which the Secretary finds that”.

Subsec. (d)(3). Pub. L. 97-22, §4(d)(3)(D), (E), inserted “, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable” after “grounds for the delay” and struck out “by the Secretary” after “the action taken”.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title X, §1063(c), Jan. 28, 2008, 122 Stat. 322, provided that the amendment made by section 1063(c) is effective Oct. 17, 2006, and as if included in the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109-364, as enacted.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-364, div. A, title V, §511(e), Oct. 17, 2006, 120 Stat. 2184, provided that: “The amendments made by this section [amending this section and sections 14308 and 14311 of this title] shall take effect on the date of the enactment of this Act [Oct. 17, 2006] and shall apply with respect to officers on promotion lists established on or after the date of the enactment of this Act.”

#### EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) to appoint officers in grades of first lieutenant and captain in Army, Air Force, and Marine Corps or in grades of lieutenant (junior grade) and lieutenant in Navy 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(c), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

#### DEADLINE FOR UNIFORM REGULATIONS ON DELAY OF PROMOTIONS

Pub. L. 109-364, div. A, title V, §511(c), Oct. 17, 2006, 120 Stat. 2183, provided that:

“(1) DEADLINE.—The Secretary of Defense shall prescribe the regulations required by section 624(d) of title 10, United States Code (as amended by subsection (a)(1) of this section), and the regulations required by section 14311 of such title (as amended by subsection (b)(1) of this section) not later than March 1, 2008.

“(2) SAVINGS CLAUSE FOR EXISTING REGULATIONS.—Until the Secretary of Defense prescribes regulations pursuant to paragraph (1), regulations prescribed by the Secretaries of the military departments under the sections referred to in paragraph (1) shall remain in effect.”

#### § 625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, or Marine Corps whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of