

dier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c)(1) Each selection board convened under section 611(a) of this title that will consider an officer described in paragraph (2) shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is a joint qualified officer.

(2) Paragraph (1) applies with respect to an officer who—

(A) is serving on, or has served on, the Joint Staff; or

(B) is a joint qualified officer.

(3) The Secretary of Defense may waive the requirement in paragraph (1) in the case of—

(A) any selection board of the Marine Corps; or

(B) any selection board that is considering officers in specialties identified in paragraph (2) or (3) of section 619a(b) of this title.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97-22, § 4(a), July 10, 1981, 95 Stat. 125; Pub. L. 97-86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99-433, title IV, § 402(a), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 106-398, § 1 [[div. A], title V, § 504(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-101; Pub. L. 111-383, div. A, title V, § 522(a), Jan. 7, 2011, 124 Stat. 4214.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111-383 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.”

2000—Subsec. (a)(1). Pub. L. 106-398, § 1 [[div. A], title V, § 504(a)(1)], struck out “who are on the active-duty

list” after “five or more officers” in second sentence and inserted after second sentence “Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list.”

Subsec. (a)(3). Pub. L. 106-398, § 1 [[div. A], title V, § 504(a)(2)], substituted “of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be” for “of that armed force, with the exact number of reserve officers to be” and “the Secretary’s discretion. Notwithstanding the first sentence of this paragraph,” for “his discretion, except that”.

1986—Subsec. (c). Pub. L. 99-433 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1981—Subsec. (a)(2). Pub. L. 97-22, § 4(a)(1), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), a selection board” for “A selection board”, and added subpar. (B).

Subsec. (a)(3). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

Pub. L. 97-22, § 4(a)(2), inserted “, with the exact number of reserve officers to be determined by the Secretary of the military department concerned in his discretion” after “at least one reserve officer of that armed force” and inserted “who are eligible to serve on the board” after “the next higher grade”.

Subsec. (a)(4). Pub. L. 97-22, § 4(a)(3), substituted “Except as provided in paragraphs (2) and (3)” for “Except as provided in paragraph (3)” and “officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve” for “retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board” and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97-22, § 4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97-22, § 4(a)(4), inserted “convened under section 611(a) of this title” after “selection boards”.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, § 1 [[div. A], title V, § 504(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102, provided that: “The amendments made by subsection (a) [amending this section] shall apply to any selection board convened under section 611(a) of title 10, United States Code, on or after August 1, 1981.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-433, title IV, § 406(f), Oct. 1, 1986, 100 Stat. 1034, provided that: “The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

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.

§ 613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of

the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2851.)

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.

§ 613a. Nondisclosure of board proceedings

(a) PROHIBITION ON DISCLOSURE.—The proceedings of a selection board convened under section 573, 611, or 628 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 573, 611, or 628 of this title, regardless of the date on which the board was convened.

(Added Pub. L. 109-364, div. A, title V, §547(a)(1), Oct. 17, 2006, 120 Stat. 2215; amended Pub. L. 111-383, div. A, title V, §503(a), Jan. 7, 2011, 124 Stat. 4207.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111-383, §503(a)(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 611 this title may not be disclosed to any person not a member of the board.”

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

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

EFFECTIVE DATE

Pub. L. 109-364, div. A, title V, §547(c), Oct. 17, 2006, 120 Stat. 2216, provided that: “Section 613a of title 10, United States Code, as added by subsection (a), shall apply with respect to the proceedings of all selection boards convened under section 611 of that title, including selection boards convened before the date of the enactment of this Act [Oct. 17, 2006]. Section 14104 of such title, as amended by subsection (b), shall apply with respect to the proceedings of all selection boards convened under section 14101 of that title, including selection boards convened before the date of the enactment of this Act.”

§ 614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to rec-

ommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and 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 notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and 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 notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than 10 calendar days before the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 97-22, §4(b), July 10, 1981, 95 Stat. 126; Pub. L. 102-190, div. A, title V, §504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 109-163, div. A, title V, §505(a), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 115-91, div. A, title V, §501(a), Dec. 12, 2017, 131 Stat. 1373.)

AMENDMENTS

2017—Subsec. (b). Pub. L. 115-91 substituted “10 calendar days before” for “the day before” in first sentence.

2006—Subsec. (b). Pub. L. 109-163 inserted “the day before” after “not later than” in first sentence.

1991—Pub. L. 102-190 struck out “; communications with boards” after “selection boards” in section catchline.

1981—Subsec. (a). Pub. L. 97-22 substituted “which shall include the convening date of the board” for “, the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board.”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-91, div. A, title V, §501(c), Dec. 12, 2017, 131 Stat. 1373, provided that: “The amendments made by this section [amending this section and section 14106 of this title] shall apply with respect to promotion selection boards convened on or after the date of the enactment of this Act [Dec. 12, 2017].”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, §505(c), Jan. 6, 2006, 119 Stat. 3227, provided that: “The amendments made by this section [amending this section and section 14106 of this title] shall take effect on March 1, 2006, and shall apply with respect to selection boards convened on or after that date.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102-190, set out as a note under section 615 of this title.

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.