

§ 615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(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 selection 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 614(b) 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)(A) In the case of an eligible officer considered for promotion to a grade specified in subparagraph (B), 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).

(B) A grade specified in this subparagraph is as follows:

(i) In the case of a regular officer, a grade above captain or, in the case of the Navy, lieutenant.

(ii) In the case of a reserve officer, a grade above lieutenant colonel or, in the case of the Navy, commander.

(C) The standards and procedures referred to in subparagraph (A) shall require the furnishing to the selection board, and to each individual member of the board, the information described in that subparagraph with regard to an officer in a grade specified in subparagraph (B) at each stage or phase of the selection board, concurrent with the screening, rating, assessment, evaluation, discussion, or other consideration by the board or member of the official military personnel file of the officer, or of the officer.

(4) Information provided to a selection 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 selection board.

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

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category 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 having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) 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.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(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 the Navy, 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. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 99-433, title IV, §402(b), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100-456, div. A, title V, §501(a), Sept. 29, 1988, 102 Stat. 1965; Pub. L. 101-189, div. A, title V, §519, Nov. 29, 1989, 103 Stat. 1444; Pub. L. 102-190, div. A, title V, §504(a)(1), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102-484, div. A, title X, §1052(7), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109-163, div. A, title V, §506(a), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 111-383, div. A, title V, §522(b), Jan. 7, 2011, 124 Stat. 4215; Pub. L. 116-92, div. A, title V, §502(a), (b), Dec. 20, 2019, 133 Stat. 1344.)

AMENDMENTS

2019—Subsec. (a)(3). Pub. L. 116-92 designated existing provisions as subpar. (A), substituted “a grade specified in subparagraph (B)” for “a grade above colonel or, in the case of the Navy, captain”, and added subpars. (B) and (C).

2011—Subsecs. (b)(5), (c). Pub. L. 111-383 substituted “of officers who are serving on, or have served on, the Joint Staff or are joint qualified officers” for “in joint duty assignments of officers who are serving, or have served, in such assignments”.

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

Subsec. (a)(4). Pub. L. 109-163, §506(a)(2)(A), substituted “paragraphs (2) and (3)” for “paragraph (2)”.

Pub. L. 109-163, §506(a)(1)(A), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 109-163, §506(a)(2)(B), substituted “, (3), and (4)” for “and (3)”.

Pub. L. 109-163, §506(a)(1)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 109-163, §506(a)(2)(C)(i), inserted “, or in paragraph (3),” after “paragraph (2)” in introductory provisions.

Pub. L. 109-163, §506(a)(1)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (a)(6)(B). Pub. L. 109-163, §506(a)(2)(C)(ii), inserted “or (3), as applicable” before period at end.

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

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

1992—Subsec. (b)(5). Pub. L. 102-484, §1052(7)(A), substituted “subsection (c)” for “subsection (b)”.

Subsec. (d). Pub. L. 102-484, §1052(7)(B), substituted “subsection (b)” for “subsection (a)”.

1991—Pub. L. 102-190 added subsec. (a) and redesignated former subsecs. (a) to (d) as (b) to (e), respectively.

1989—Subsec. (d). Pub. L. 101-189 added subsec. (d).

1988—Subsec. (a)(4). Pub. L. 100-456, §501(a)(1), added cl. (4) and struck out former cl. (4) which read as follows: “information relating to the needs of the armed force concerned for officers having particular skills;”.

Subsec. (c). Pub. L. 100-456, §501(a)(2), added subsec. (c).

1986—Pub. L. 99-433 designated existing provisions as subsec. (a), added par. (5), redesignated former par. (5) as (6), and added subsec. (b).

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-92, div. A, title V, §502(c), Dec. 20, 2019, 133 Stat. 1344, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 20, 2019], and shall apply with respect to the proceedings of promotion selection boards convened under section 611(a) of title 10, United States Code, after that date.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title V, §506(c), Jan. 6, 2006, 119 Stat. 3228, provided that: “The amendments made by this section [amending this section and section 14107 of this title] shall take effect on October 1, 2006, and shall apply with respect to promotion selection boards convened on or after that date.”

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title V, §504(e), Dec. 5, 1991, 105 Stat. 1358, provided that: “The amendments made by this section [amending this section and sections 614, 616, 618, and 619 of this title] shall apply to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-456, div. A, title V, §501(e), Sept. 29, 1988, 102 Stat. 1966, provided that: “The amendments made by this section [amending this section and sections 616 to 618 of this title] shall take effect 60 days after the date of the enactment of this Act [Sept. 29, 1988] and shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after that effective date.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99-433, set out as a note under section 612 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.

§ 616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving 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 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(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 615 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 7233, 8167, or 9233 of this title, as applicable.

(d) The number of officers recommended for promotion by a selection board convened under section 611(a) of this title may not exceed the number equal to 95 percent of the number of officers included in the promotion zone established under section 623 of this title for consideration by the board.

(e) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(f) The recommendations of a selection 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 617 of this title, is signed by each member of the board.

(g) The Secretary convening a selection board under section 611(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 selection board or any member of a selection board in the formulation of the board's recommendations.

(h)(1) In selecting the officers to be recommended for promotion, a selection board may, when authorized by the Secretary of the military department concerned, recommend officers of particular merit, from among those officers selected for promotion, to be placed higher on the promotion list established by the Secretary under section 624(a)(1) of this title.

(2) An officer may be recommended to be placed higher on a promotion list under paragraph (1) only if the officer receives the recommendation of at least a majority of the members of the board, unless the Secretary concerned establishes an alternative requirement. Any such alternative requirement shall be furnished to the board as part of the guidelines furnished to the board under section 615 of this title.

(3) For the officers recommended to be placed higher on a promotion list under paragraph (1), the board shall recommend the order in which those officers should be placed on the list.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 100-456, div. A, title V, §501(b), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102-190, div. A, title V, §504(b), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102-484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 109-364, div. A, title V, §512(a), Oct. 17, 2006, 120 Stat. 2184; Pub. L. 115-232, div. A, title V, §504(a), title VIII, §809(a), Aug. 13, 2018, 132 Stat. 1742, 1840; Pub. L. 116-92, div. A, title V, §503(a), Dec. 20, 2019, 133 Stat. 1344.)

AMENDMENTS

2019—Subsecs. (d) to (h). Pub. L. 116-92 added subsec. (d) and redesignated former subsecs. (d) to (g) as (e) to (h), respectively.

2018—Subsec. (c)(3). Pub. L. 115-232, §809(a), substituted "section 7233, 8167, or 9233" for "section 3583, 5947, or 8583".

Subsec. (g). Pub. L. 115-232, §504(a), added subsec. (g). 2006—Subsec. (c)(3). Pub. L. 109-364 added par. (3).

1992—Pub. L. 102-484 substituted "section 615(b)" for "section 615(a)".

1991—Subsecs. (e), (f). Pub. L. 102-190 added subsecs. (e) and (f).

1988—Subsec. (a). Pub. L. 100-456 inserted "(as noted in the guidelines or information furnished the board under section 615(a) of this title)" after "particular skills".