

109-163, div. A, title V, § 505(b), Jan. 6, 2006, 119 Stat. 3227; Pub. L. 115-91, div. A, title V, § 501(b), Dec. 12, 2017, 131 Stat. 1373.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(f), 5900, and 8362(f) of this title, prior to repeal by Pub. L. 103-337, § 1629(a)(1), (b)(2), (c)(1).

AMENDMENTS

2017—Pub. L. 115-91 substituted “10 calendar days” for “the day”.

2006—Pub. L. 109-163 inserted “the day before” after “not later than”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-91 applicable with respect to promotion selection boards convened on or after Dec. 12, 2017, see section 501(c) of Pub. L. 115-91, set out as a note under section 614 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 effective Mar. 1, 2006, and applicable with respect to selection boards convened on or after that date, see section 505(c) of Pub. L. 109-163, set out as a note under section 614 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.

§ 14107. Information furnished by the Secretary concerned to promotion boards

(a) INTEGRITY OF THE PROMOTION SELECTION BOARD PROCESS.—(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(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 promotion 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 14106 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 pre-

scribed pursuant to paragraph (1) is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) In the case of an eligible officer considered for promotion to a grade above colonel or, in the case of the Navy, captain, 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).

(4) Information provided to a promotion 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 promotion board.

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

(b) INFORMATION TO BE FURNISHED.—The Secretary of the military department concerned shall furnish to a promotion board convened under section 14101(a) of this title the following:

(1) In the case of a mandatory promotion board, the maximum number (as determined in accordance with section 14307 of this title) of officers in each competitive category under consideration that the board is authorized to recommend for promotion to the next higher grade.

(2) The name of each officer in each competitive category under consideration who is 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 (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.

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.

§ 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 7233, 8167, or 9233 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 Sec-