



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
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WASHINGTON DC 20350-1000

SECNAVINST 1401.4B
ASN (M&RA)
30 April 2019

SECNAV INSTRUCTION 1401.4B

From: Secretary of the Navy

Subj: CONSIDERATION OF ADVERSE INFORMATION BY GENERAL AND FLAG
OFFICER PROMOTION SELECTION BOARDS

Ref: (a) DoD Instruction 1320.14 of 7 March 2018
(b) DoD Instruction 1320.04 of 3 January 2014
(c) 10 U.S.C. §615
(d) 10 U.S.C. §14107
(e) SECNAVINST 1420.3B
(f) SECNAVINST 5200.35F
(g) SECNAV M-5214.1

Encl: (1) Definitions
(2) Procedures

1. Purpose. To establish Department of the Navy (DON) procedures, consistent with references (a) through (f), to require that adverse information is furnished to Promotion Selection Boards (PSB(s)) considering officers for promotion to the grades of rear admiral (lower half) and brigadier general (O-7), and rear admiral and major general (O-8). This instruction is a complete revision and should be read in its entirety.

2. Cancellation. SECNAVINST 1401.4A.

3. Definitions. See enclosure (1).

4. Applicability. This instruction applies to all PSBs that consider commissioned officers of the active and reserve components of the Navy and Marine Corps for promotion to the grades of O-7 and O-8. Any procedures established by the Navy and Marine Corps for identifying adverse information must apply equally to all eligible officers.

5. Policy. Reference (a) requires that PSBs considering officers for promotion to general or flag officer grades are provided with all adverse information, as defined by reference

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(b). To the maximum extent possible, all information relevant to an officer's qualifications for promotion must be included in the official military personnel file. Adverse information contained in an officially documented investigation or inquiry that is not in the official military personnel file must be provided to the PSB prior to the board making a recommendation for selection in accordance with references (a), (c), and (d) and this instruction. In the case of adverse information not available for review by the PSB, such adverse information must be provided to a Promotion Review Board (PRB) prior to the Secretary of the Navy (SECNAV) recommending the officer for nomination for promotion to the Secretary of Defense pursuant to the procedures set forth by this instruction.

6. Responsibilities

a. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) is responsible for the overall supervision and execution of the procedural guidance and requirements under this instruction.

b. The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) are responsible for implementing and executing the requirements of this instruction within the Navy and Marine Corps, respectively.

c. The Naval Inspector General (NAVIG) must ensure that reviews of NAVIG investigative files are conducted as outlined in enclosure (2) in support of the CNO and CMC.

d. Director, Naval Criminal Investigative Service (NCIS) must ensure that reviews of the National Crime Information Center is conducted to the maximum extent possible as outlined in enclosure (2) in support of the CNO and CMC.

e. The Judge Advocate General (JAG) of the Navy must review reports of PSBs in accordance with reference (e). PRBs must be reviewed for legal and regulatory compliance and ensure that reviews of JAG database files, if any, are conducted as outlined in enclosure (2) in support of the CNO and CMC.

f. The Navy General Counsel (GC) must ensure that reviews of GC database files, if any, are conducted as outlined in enclosure (2) in support of the CNO and CMC.

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7. Consideration By the PSB. In accordance with reference (a), PSB precepts must contain guidance requiring that, if adverse information has been made available to a PSB concerning a particular officer, each board member must consider such information before recommending that officer for promotion. If an officer with adverse information is recommended for promotion, the board report must contain a certification that each member of the board reviewed the adverse information prior to selecting the officer for promotion.

8. Consideration by Promotion Review Boards (PRB)

a. Adverse information that was not reviewed by a PSB, including adverse information that arose subsequent to convening a board or adverse information from investigations or inquiries that were not completed in time to provide the affected officer adequate notice and opportunity to comment prior to the convening of the PSB, must be presented to a PRB. The officer must be notified of the convening of a PRB and must be provided an opportunity to review the adverse material and submit comments on the adverse information as described in enclosure (2).

b. The PRB must consider the adverse information, the officer's official military personnel file, any submission to the board by an officer under consideration, and the precept and convening order of the PSB that selected the officer for promotion. The PRB must make a written recommendation to the SECNAV, via the JAG and the CNO or CMC, as to whether, in light of the adverse information, the officer remains fully qualified for promotion to meet the needs of the Navy or Marine Corps. To the maximum extent possible, the PRB must be conducted in accordance with reference (a) relating to communications with and deliberations by the PSB.

9. Consideration by the SECNAV

a. When a PSB recommends an officer for promotion after considering adverse information that was properly placed in the officer's official military personnel file, a complete unredacted report of investigation regarding the adverse information must be forwarded to the SECNAV with the board report in accordance with the procedures established in references (b) and (e).

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b. When a PSB recommends an officer for promotion after considering adverse information pursuant to this instruction, and that adverse information is not contained in the officer's official military personnel file, a complete unredacted report of investigation regarding the adverse information, and the officer's response, when applicable, must be forwarded to the SECNAV with the board report for review and forwarding to the Secretary of Defense in accordance with the procedures established in references (b) and (e).

c. When a PRB makes a recommendation concerning an officer's qualifications for promotion after considering adverse information pursuant to this instruction, a complete unredacted report regarding the adverse information, the officer's response, when applicable, and the written recommendation of the PRB must be forwarded to the SECNAV, via the JAG and the CNO or CMC.

d. The SECNAV may consider such information, as well as any other available information, in determining whether to recommend to the Secretary of Defense that the officer concerned be promoted.

10. Service Procedures. Any Navy and Marine Corps procedures further implementing this instruction must be forwarded to ASN (M&RA) for approval and coordination with the Secretary of Defense.

11. Managers Internal Control Program (MICP). In accordance with reference (f), the establishment and use of internal controls and accounting procedures are mandated to ensure: effectiveness and efficiency of operations; reliability of financial reporting; and compliance with applicable laws and regulations. Additionally, as part of the annual MICP report, the Navy and Marine Corps will provide the ASN (M&RA) with copies of the sections of their reports that are relevant to this program.

12. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules

found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

13. Reports. The reporting requirements contained in paragraphs 9, 11, and enclosure (1), paragraph 2 are exempt from information collection control, per reference (g), part IV, paragraphs 7k and 7n.



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DEFINITIONS

1. Adverse Information. Adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual

a. The following types of information, even though credible, are not considered adverse:

(1) Motor vehicle violations that did not require a court appearance;

(2) Minor infractions without negative effect on an individual or the good order and discipline of the organization that:

(a) Were not identified because of substantiated findings or conclusions from an officially documented investigation; and

(b) Did not result in more than a non-punitive rehabilitative counseling administered by a superior to a subordinate.

b. Adverse information does not include:

(1) Information previously considered by the Senate pursuant to an earlier nomination of the officer;

(2) Information attributed to an individual 10 or more years before the date of the personnel action under consideration, except for substantiated conduct any single act of which, if tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than one year. The date of the substantiated adverse finding or conclusion from an officially documented investigation or inquiry is used to establish the time period, not the date of the incident.

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2. Promotion Review Board (PRB). A board composed of at least three officers senior in grade to the officers under consideration convened by the Chief of Naval Personnel or CMC to review adverse information that was not available for review by the PSB. After reviewing the adverse information, the board makes a recommendation to the SECNAV on the qualification for promotion of an officer selected by the PSB.

PROCEDURES

1. Per references (a) and (b), adverse information must be presented to the PSB for review if the adverse information has not been considered previously by the SECNAV during the officer's most recent successful nomination process and is substantiated 90 or more days before the convening date of the PSB. Therefore:

a. The CNO and CMC (or their designees) must identify all officers eligible for an O-7 and O-8 PSB and must comply with reference (b) to the maximum extent possible. Instances of non-compliance must be forwarded to the SECNAV. This screening must be completed no later than 90 days before the convening of the applicable selection board.

b. Upon identification of adverse information, the CNO and CMC (or their designees) must verify whether that adverse information is contained in the officer's official military personnel file. If the adverse information is contained in the officer's official military personnel file, then no further action is necessary. If the adverse information is not contained in the official military personnel file, but should be placed in the official military personnel file pursuant to applicable service regulations, the adverse information must be forwarded for inclusion in the official military personnel file in accordance with established service procedures.

c. If the adverse information is contained in documentation that cannot be placed in the officer's official military personnel file under applicable law or regulations:

(1) The CNO or CMC must forward to ASN (M&RA) an executive summary of the adverse information.

(2) ASN (M&RA) must confirm that the information constitutes adverse information as defined by reference (b) and this instruction. In doing so, ASN (M&RA) must notify CNO or CMC, as applicable, that the adverse information must be furnished to the PSB. If the information cannot be presented to the board in its current form (due to its classification status or a similar concern), a factual summary of the information, prepared by administrative personnel for the purpose of

facilitating the work of the board, may, in accordance with references (c) and (d), be furnished to the board instead.

(3) The CNO or CMC must then notify the officer concerned of the decision to furnish the adverse information (or factual summary) to the PSB and provide the officer a copy of the adverse information (or factual summary). The officer must be provided 30 calendar days from receipt of the notice and adverse information (or factual summary) in which to provide comments or other documentation to the PSB for consideration in conjunction with the adverse information.

(4) Any information provided by the officer, in addition to the adverse information (or factual summary), must be provided to the PSB in accordance with sections references (c) and (d).

d. Adverse information that is substantiated less than 90 calendar days prior to the board convening date may be placed in the official military personnel file prior to the PSB provided it is placed in the official military personnel file in accordance with service regulations. Additionally, adverse information that is substantiated less than 90 calendar days prior to the board convening date that is contained in documentation that service regulations do not permit placing in the official military personnel file (or a factual summary of such information) may be provided to the selection board as long as it is provided, per this instruction, including the requirement to afford the affected officer 30 calendar days to review and provide comment.

e. The determination to provide adverse information to a PSB is not applicable to subsequent promotion selection boards unless the information has been properly placed in the official military personnel file of the officer concerned or a new determination is made after compliance with the above procedures and the requirements of references (a) through (e).

f. Identification of adverse information is a continuing process. The CNO and CMC must ensure that the SECNAV is aware of any ongoing or open investigations or inquiries pertaining to officers prior to recommending them for nomination for promotion, and must keep the SECNAV apprised of the status on all such investigations or inquiries into any officer who has

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already been recommended for nomination but not yet promoted. Likewise, the CNO and CMC must ensure that reviews of Department of Defense Inspector General investigative files for all officers recommended for nomination for promotion remain current (within 90 days) until promotion.