SEC. 550. PROCEDURES FOR JUDICIAL REVIEW OF MILITARY PERSONNEL DECISIONS RELATING TO CORRECTION OF MILITARY RECORDS.

(a) JUDICIAL REVIEW.—

(1) IN GENERAL.—Chapter 79 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1560. Judicial review of decisions relating to correction of military records

"(a) AVAILABILITY OF JUDICIAL REVIEW.—

"(1) IN GENERAL.—Any person adversely affected by a records correction final decision may obtain judicial review of the decision in a court with jurisdiction to hear the matter.

"(2) RECORDS CORRECTION FINAL DECISION DEFINED.—In this section, the term 'records correction final decision' means any of the following:

"(A) A final decision issued by the Secretary concerned pursuant to section 1552 of this title.

"(B) A final decision issued by the Secretary of a military department or the Secretary of Homeland Security pursuant to section 1034(f) of this title.

"(C) A final decision issued by the Secretary of Defense pursuant to section 1034(g) of this title.

"(b) MATTERS MUST BE JUSTICIABLE.—Notwithstanding subsection (a), a court in which judicial review of a records correction final decision is sought does not have jurisdiction to review any matter or issue raised in a petition of review that is not justiciable or that is based on an asserted failure to remove an injustice.

"(c) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—

"(1) GENERAL RULE.—Except as provided in paragraph (3), judicial review of a matter that could be subject to correction under a provision of law specified in subsection (a)(2) in a case arising after the date of the enactment of this section may not be obtained under this section or any other provision of law unless—

"(A) the petitioner has requested a correction under section 1552 of this title (including such a request in a matter arising under section 1034 of this title); and

"(B) the Secretary concerned has rendered a final decision denying that correction in whole or in part.

"(2) WHISTLEBLOWER CASES.—In a case arising after the date of the enactment of this section in which the final decision of the Secretary concerned is subject to review by the Secretary of Defense under section 1034(g) of this title, the petitioner is not required to seek such review before obtaining judicial review, but if the petitioner seeks such review, judicial review may not be obtained until the Secretary of Defense renders a final decision.

"(3) CLASS ACTIONS.—In the case of a matter subject to correction under a provision of law specified in subsection (a)(2) in a case arising after the date of the enactment of this section in which judicial review is not precluded by reason of paragraph (1) or (2), if judicial review of a records correction final decision of the matter is sought and if the petitioner for judicial review also seeks to bring a class action with respect to a matter for which the petitioner requested a correction under section 1552 of this title (including such a request in a matter arising under section 1034 of this title) and if the court issues an order certifying a class in the case, the limitations of paragraphs (1) and

(2) shall be inapplicable to any member of the class (other than the petitioner) with respect to any matter covered by a claim for which the class is certified.

"(d) STATUTES OF LIMITATION.—

"(1) TWO YEARS FROM FINAL DECISION.—In the case of a records correction final decision that is issued on or after the date of the enactment of this section, such decision is not subject to judicial review under this section or otherwise subject to review in any court unless petition for such review is filed in a court not later than two years after the date of the final decision other than in a matter to which paragraph (2) applies.

(2) SIX YEARS FOR CERTAIN CLAIMS THAT MAY RESULT IN PAYMENT OF MONEY.—(A) In the case of a records correction final decision that is issued on or after the date of the enactment of this section and which is described in subparagraph (B), such decision (or the portion of such decision described in such subparagraph) is not subject to judicial review under this section or otherwise subject to review in any court unless petition for such review is filed in a court not later than six years after the date of discharge, retirement, release from active duty, or death while on active duty of the person whose military records are the subject of the correction request. There shall be excluded from the computation of such six-year period the period (i) beginning on the date of the filing with the Secretary of a request for correction of military records leading to the records correction final decision, and (ii) ending on the date of such decision.

"(B) A records correction final decision is described in this subparagraph to the extent that the decision, or portion of the decision, is a denial of a claim that, if relief were to be granted by the court, would support, or result in, the payment of money either under a court order or under a subsequent administrative determination.

"(e) SOLE BASIS FOR JUDICIAL REVIEW.—In the case of a cause of action arising after the date of the enactment of this section, no court shall have jurisdiction to review any matter subject to correction under a provision of law specified in subsection (a)(2) except as provided in this section.

"(f) HABEAS CORPUS.—This section does not affect any cause of action arising under chapter 153 of title 28.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1560. Judicial review of decisions.".

(b) EFFECT OF DENIAL OF REQUEST FOR CORRECTION OF RECORDS WHEN PROHIBITED PERSONNEL ACTION ALLEGED.—

(1) NOTICE OF DENIAL; PROCEDURES FOR JUDICIAL REVIEW.—Subsection (f) of section 1034 of such title is amended by adding at the end the following new paragraph:

"(7) In any case in which the final decision of the Secretary concerned results in denial, in whole or in part, of any requested correction of the record of the member or former member, the Secretary concerned shall provide the member or former member a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.".

(2) SECRETARY OF DEFENSE REVIEW; NOTICE OF DENIAL.—Subsection (g) of such section is amended—

(A) by inserting "(1)" before "Upon the completion of all"; and

(B) by adding at the end the following new paragraph:

"(2) The submittal of a matter to the Secretary of Defense by the member or former member under paragraph (1) must be made within 90 days of the receipt by the member or

former member of the final decision of the Secretary of the military department concerned in the matter. In any case in which the final decision of the Secretary of Defense results in denial, in whole or in part, of any requested correction of the record of the member or former member, the Secretary of Defense shall provide the member or former member a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.".

(3) SOLE BASIS FOR JUDICIAL REVIEW.—Such section is further amended—

(A) by redesignating subsections (h) and (i) as subsections (i) and (j), respectively; and

(B) by inserting after subsection (g) the following new subsection (h):

"(h) JUDICIAL REVIEW.—

"(1) A decision of the Secretary of Defense under subsection (g) shall be subject to judicial review only as provided in section 1560 of this title.

"(2) In a case in which review by the Secretary of Defense under subsection (g) was not sought, a decision of the Secretary of a military department under subsection (f) shall be subject to judicial review only as provided in section 1560 of this title.

"(3) A decision by the Secretary of Homeland Security under subsection (f) shall be subject to judicial review only as provided in section 1560 of this title.".

(c) EFFECT OF DENIAL OF OTHER REQUESTS FOR CORRECTION OF MILITARY RECORDS.—Section 1552 of such title is amended by adding at the end the following new subsections:

"(h) In any case in which the final decision of the Secretary concerned results in denial, in whole or in part, of any requested correction, the Secretary concerned shall provide the claimant a concise written statement of the basis for the decision and a notification of the

availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

"(i) A decision by the Secretary concerned under this section shall be subject to judicial review only as provided in section 1560 of this title.".

(d) EFFECTIVE DATE AND RETROACTIVE APPLICATION.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect one year after the date of the enactment of this Act.

(2) RETROACTIVE APPLICATION.—The amendments made by this section shall apply to all final decisions of the Secretary of Defense under section 1034(g) of title 10, United States Code, and of the Secretary of a military department and the Secretary of Homeland Security under sections 1034(f) or 1552 of such title, whether rendered before, on, or after the date of the enactment of this Act.

(3) TRANSITION.—During the period between the date of the enactment of this Act and the effective date specified in paragraph (1), in any case in which the final decision of the Secretary of Defense under section 1034(g) of title 10, United States Code, or the Secretary concerned under sections 1034(f) or 1552 of title 10, United States Code, results in denial, in whole or in part, of any requested correction of the record of a member or former member of the Armed Forces or the record of a claimant under such section 1552, the individual shall be informed in writing of the time for obtaining review of the decision pursuant to section 1560 of such title, as added by subsection (a).

(e) IMPLEMENTATION.—The Secretaries concerned (as defined in section 101(a)(9) of title 10, United States Code) may prescribe appropriate regulations, and interim guidance before prescribing such regulations, to implement the amendments made by this section. In the case of

1 the Secretary of a military department, such regulations may not take effect until approved by the

2 Secretary of Defense.

3 (f) CONSTRUCTION.—This section and the amendments made by this section do not affect

4 the authority of any court to exercise jurisdiction over any case that was properly before the court

5 before the effective date specified in subsection (d)(1).

Section-By-Section Analysis

Subsections (a), (b), and (c):

Subsection (a) of the proposal adds a new section 1560 to title 10, United States Code. The new section establishes procedures for judicial review of any records correction final decision made under sections 1034(f) or (g) and section 1552.

Subsection (b) of the new section 1560 raises the jurisprudential concept of nonjusticiability to the level of a jurisdictional bar. It is intended to preserve the current nonjusticiable status of certain issues that might come before an internal correction board, but are nonetheless precluded from judicial review. For example, courts have previously ruled that personnel assignment decisions are not justiciable and will not be reviewed by federal courts. This subsection also codifies the judicial determination denying judicial review of requests to remove an injustice, thereby limiting such requests to correcting an error. See Murphy v. United States, 993 F.2d 871, 873 (Fed. Cir. 1993).

Subsection (c) of the new section 1560 specifically requires that a claimant use the remedies available through sections 1034 and 1552 before seeking judicial review under section 1560. The exhaustion requirement is satisfied only when the Secretary has reached and rendered a final decision. This requires any complaint raising issues, in whole or in part, which may be considered by the correction boards for full or partial relief be first submitted to the appropriate correction board. It specifically requires that claimants pursue the administrative remedies available through the correction board before seeking judicial review of an administrative personnel decision. This language is intended to satisfy the requirements of Darby v. Cisneros, 509 U.S. 137 (1993), which held that courts do not have authority to require administrative exhaustion as a prerequisite for judicial review under the Administrative Procedure Act unless specifically mandated by statute or agency rules. The exhaustion requirement here is satisfied only when the Secretary concerned has reached and rendered a final decision. Requiring a final decision and the exhaustion of administrative remedies is designed to facilitate the production of a decisional record adequate for meaningful judicial review.

Subsection (c)(3) of the new section1560 specifically exempts claimants, except for the named plaintiff, who are certified as class members in a class-action lawsuit from the

requirement to exhaust their administrative remedies at a correction board before seeking judicial review.

The focus that this proposal places on the administrative process does not come at the price of reduced protections for military members or veterans. The statutory charter of the boards creates equitable bodies which are authorized to act when necessary to further the interests of justice. They are not limited, as is the judiciary, to simply ensuring compliance with the law. Moreover, as the boards are comprised of members of the executive department and act on behalf of the service secretaries, they are authorized and competent to address the substantive aspects of issues which are not justiciable. In the vast majority of cases, the probability that a claimant will obtain relief from an equitable board far exceeds the likelihood of a successful challenge in court. This bill does nothing to diminish the probability that an individual claimant will obtain relief. It simply directs members and former members of the armed forces to the administrative forum, a correction board, that is better suited to resolve their grievance and clarifies the procedures for obtaining judicial review of any adverse administrative decisions. In so doing, it is fully consistent with the general trend towards alternative dispute resolution. It provides a clear roadmap for service members, so that they may fully be afforded the fullness of administrative and judicial review to best ensure their rights. There is currently much confusion about where a service member can seek such relief. They can go to a correction board, to a district court, or to the Court of Federal Claims. By requiring a service member to first seek relief at a correction board, it benefits the service member by providing a no-cost, non-adversarial forum that does not require an attorney. Additionally, this mandatory forum will create an administrative record that will assist a federal court if the service member subsequently seeks judicial review of the correction board decision.

Subsection (d) of the new section 1560 provides the statute of limitations for judicial review. This section grandfathers those individuals who received a final decision prior to the date of enactment. This is intended to generously protect the rights of service members who receive a final response prior to the enactment of the legislation. For final decisions made prior to the date of enactment, a claimant has the same period of time as exists under current law. For final decisions made on or after the date of enactment, the claimant has two years from the date of the final decision to file a petition for judicial review. The two year period of limitation, articulated in subsection (d)(1), was incorporated because it encourages timely challenges, thereby aiding in the accurate and just resolution of issues involving military records. Because the reviewing court would not be conducting a de novo trial, but instead would be reviewing an administrative record under the standard set out in subsection 1560(b), the two year period should provide the claimant ample time to assess the desirability of seeking judicial review and take the necessary steps to exercise that right. By way of reference, this period substantially exceeds the 60 days provided to civilian employees for judicial review under the Civil Service Reform Act, 5 U.S.C. § 7703(b)(1). It is also noteworthy that any claimant who is on active duty automatically has any statute of limitations tolled for the period of time they are on active duty under the Servicemembers Civil Relief Act, which has been applied by courts to correction board limitations.

In addition to the two year limit in subsection 1560(d)(1), subsection (d)(2) provides an additional limit on the judicial reviewability of correction board decisions where the correction

board has waived its three-year statute of limitations set forth in section 1552(b) and where a court decision may result in the payment of money. Only denials of records correction final decisions that are received by the court within six years of the date of discharge, retirement, release from active duty, or death while on active duty of the person whose records are the subject of the records correction request are subject to judicial review for money claims. This preserves the rule in the U.S. Court of Federal Claims that tolls the statute of limitations six years from the date of discharge, retirement, or release from active duty for money claims. See Martinez v. United States, 333 F.3d 1295 (Fed. Cir. 2003) (en banc), cert. denied, 124 S. Ct. 1404 (2004). The statute of limitations for a correction board is three years from the discovery of the error or injustice. This statute of limitations can be excused by a correction board when it finds it to be in the interest of justice, and such limitation is routinely waived. See section 1552 (b). Subsection (d)(2) will allow for judicial review of money claims where the board has waived its statute of limitations but not more than six years from the date of discharge, retirement, release from active duty, or death while on active duty of the person whose records are the subject of the records correction request. The correction board is free to exercise its equitable powers to review even older cases, including money claims, but such decisions will not be subject to judicial review.

Subsection (e) of the new section 1560 limits the jurisdiction of courts to review any matter subject to a records correction under a provision of law specified in sections 1034(f) and (g) and section 1552.

Subsection (f) leaves intact the courts' existing jurisdiction over petitions for a writ of habeas corpus.

Subsection (b) of the proposal amends section 1034 of title 10 to require a "concise written statement of the basis" for any final decision by the Secretary of a military department or the Secretary of Homeland Security under section 1034(f) or the Secretary of Defense under section 1034(g) which does not grant the complete relief requested by the claimant. This provision also requires the Secretary concerned to accompany such decisions with notice of the availability of judicial review and the time period for obtaining such review. In addition, a new subsection, 1034(h), is added which precludes any judicial review of final decisions made under 1034(f) or (g) other than that which is provided for in section 1560. This subsection permits direct judicial review of final decisions of the Secretary of the military departments in cases where the petitioner does not apply for review by the Secretary of Defense.

Subsection (c) of the proposal adds a new subsection (h) to section 1552 of title 10 to require the Secretary concerned to provide the same concise rationale and explanation of the procedure for obtaining judicial review that is required under section 1034 for decisions which fail to grant complete relief. In both instances, this requirement was primarily designed to direct the production of a record of decision which could be subjected to a meaningful review in accordance with the provisions of section 1560. In addition, the requirement is an acknowledgment that applicants to the correction boards[1] would be well served by a meaningful explanation of an adverse ruling. Such explanations may actually serve to dispel the need for

[1] The term "correction boards" is used throughout this document to refer to the boards convened on behalf of the Secretaries of the military departments and the Secretary of Homeland Security pursuant to 10 U.S.C. § 1552.

some litigation by fostering a legitimate belief by the applicants that their claims have been heard, understood, and given due consideration.

However, most applicants to the correction boards are not contemplating litigation, but are simply seeking a fair and efficient resolution of their grievance. A lucid and succinct explanation often obtained from a correction board within six months is preferable to something akin to a judicial opinion requiring extensive preparation and time. In adopting the explanatory requirement, the intent is to minimize the burden on the correction boards, in the interests of efficiency, while enhancing the legitimacy of the correction boards and preserving the efficacy of judicial review. Accordingly, the language directing the correction boards to explain their decisions should not be construed as imposing any degree of formalism beyond the literal requirements.

In cases in which the administrative record has not been adequately developed or the record of decision is not sufficiently complete, it is anticipated that the reviewing court will remand the case to the correction board for further action in accordance with the court's instructions.

Finally, a new subsection (i) is added to section 1552 which precludes any judicial review of decisions made under section 1552 except as provided by section 1560.

Subsection (d):

Subsection (d) of the proposal makes the amendments made by this proposal effective one year after enactment. Its provisions are applicable to all final records correction decisions of the correction boards, whether they were rendered before or after the effective date. In other words, the proposal has retroactive effect on those decisions which have been rendered but for which judicial review has not been sought as of the effective date of the proposal. It was determined that the clarity that the proposal intended would be lost, if only temporarily, if we incorporated a complex implementation scheme. With regard to those cases decided before the effective date of the legislation which did not include a concise basis for the board's decision, it is intended that the reviewing courts would remand the cases back to the boards for further consideration in accordance with the provisions of this law.

Budget Implications: Requiring an exhaustion of administrative remedies makes more efficient use of government resources and increases the chances of a resolution without the need for resource-consuming litigation. The relatively small number of additional cases brought to a correction board will not increase personnel requirements and will be offset by the lesser number of cases directly filing complaints in federal courts.

Changes to Existing Law: This proposal would make the following changes to title 10, United States Code:

<u>§ 1560. Judicial review of decisions relating to correction of military records</u>

[*The proposal would add a new section 1560. The text of the proposed new section appears in full in the legislative text above*.]

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§ 1034. Protected communications; prohibition of retaliatory personnel actions

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.— (1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.— (1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command; or

(v) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

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(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(7) In any case in which the final decision of the Secretary concerned results in denial, in whole or in part, of any requested correction of the record of the member or former member, the Secretary concerned shall provide the member or former member a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

(g) REVIEW BY SECRETARY OF DEFENSE.—(1) Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(2) The submittal of a matter to the Secretary of Defense by the member or former member under paragraph (1) must be made within 90 days of the receipt by the member or the former member of the final decision of the Secretary of the military department concerned in the matter. In any case in which the final decision of the Secretary of Defense results in denial, in whole or in part, of any requested correction of the member or former member, the Secretary of Defense shall provide the member or former member a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

(h) JUDICIAL REVIEW.—

(1) A decision of the Secretary of Defense under subsection (g) shall be subject to judicial review only as provided in section 1560 of this title.

(2) In a case in which review by the Secretary of Defense under subsection (g) was not sought, a decision of the Secretary of a military department under subsection (f) shall be subject to judicial review only as provided in section 1560 of this title.

(3) A decision by the Secretary of Homeland Security under subsection (f) shall be subject to judicial review only as provided in section 1560 of this title.

~~(h)~~(i) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

~~(i)~~(j) DEFINITIONS.—In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

(2) The term "Inspector General" means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

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§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the

error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c)(1) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee.

(2) If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(A) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(B) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(C) as otherwise prescribed by the law applicable to that kind of payment.

(3) A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(4) ***

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) In this section, the term "military record" means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter

affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).

(h) In any case in which the final decision of the Secretary concerned results in denial, in whole or in part, of any requested correction, the Secretary concerned shall provide the claimant a concise written statement of the basis for the decision and a notification of the availability of judicial review of the decision pursuant to section 1560 of this title and the time for obtaining such review.

(i) A decision by the Secretary concerned under this section shall be subject to judicial review only as provided in section 1560 of this title.