

in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy shall be made by the President alone.

(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps may be made by the Secretary concerned in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).

(Added Pub. L. 96-513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97-22, §3(a), July 10, 1981, 95 Stat. 124; Pub. L. 108-375, div. A, title V, §501(a)(4), (c)(5), Oct. 28, 2004, 118 Stat. 1873, 1874.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375, §501(a)(4), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.”

Subsec. (c). Pub. L. 108-375, §501(c)(5), added subsec. (c).

1981—Pub. L. 97-22 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title V, §501(g), Oct. 28, 2004, 118 Stat. 1875, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 647 of this title, amending this section and sections 532, 619, 641, 1174, 2114, 12201, 12203, and 12731 of this title, and repealing section 522 of this title] shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act [Oct. 28, 2004].

“(2) The amendment made by subsection (a)(1) [amending section 532 of this title] shall take effect on May 1, 2005.”

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter 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.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

PROGRAM TO INCREASE USE OF CERTAIN NURSES BY MILITARY DEPARTMENTS

Pub. L. 101-189, div. A, title VII, §708, Nov. 29, 1989, 103 Stat. 1475, provided that:

“(a) PROGRAM REQUIRED.—(1) Not later than September 30, 1991, the Secretary of each military department shall implement a program to appoint persons who have an associate degree or diploma in nursing (but have not received a baccalaureate degree in nursing) as officers and to assign such officers to duty as nurses.

“(2) An officer appointed pursuant to the program required by subsection (a) shall be appointed in a warrant officer grade or in a commissioned grade not higher than O-3. Such officer may not be promoted above the grade of O-3 unless the officer receives a baccalaureate degree in nursing.

“(b) REPORT ON IMPLEMENTATION.—Not later than April 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the actions taken by the Secretaries of the military departments to implement the program required by this section.”

EX. ORD. NO. 13384. ASSIGNMENT OF FUNCTIONS RELATING TO ORIGINAL APPOINTMENTS AS COMMISSIONED OFFICERS AND CHIEF WARRANT OFFICER APPOINTMENTS IN THE ARMED FORCES

Ex. Ord. No. 13384, July 27, 2005, 70 F.R. 43739, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Assignment of Functions to the Secretary of Defense.* The Secretary of Defense shall perform the functions of the President under the following provisions of title 10, United States Code:

(a) subsection 531(a)(1); and

(b) the second sentence of subsection 571(b).

SEC. 2. *Reassignment of Functions Assigned.* The Secretary of Defense may not reassign the functions assigned to him by this order.

SEC. 3. *General Provisions.* (a) Nothing in this order shall be construed to limit or otherwise affect the authority of the President as Commander in Chief of the Armed Forces of the United States, or under the Constitution and laws of the United States to nominate or to make or terminate appointments.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

GEORGE W. BUSH.

§ 532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be given only to a person who—

- (1) is a citizen of the United States;
- (2) is able to complete 20 years of active commissioned service before his sixty-second birthday;
- (3) is of good moral character;
- (4) is physically qualified for active service; and
- (5) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 5589 or 5596 of this title.

(d)(1) A person receiving an original appointment as a medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps is not subject to clause (2) of subsection (a).

(2) A commissioned officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense) is not subject to clause (2) of subsection (a).

[(e) Repealed. Pub. L. 108-375, div. A, title V, § 501(a)(1), Oct. 28, 2004, 118 Stat. 1872.]

(f) The Secretary of Defense may waive the requirement of paragraph (1) of subsection (a) with respect to a person who has been lawfully admitted to the United States for permanent residence, or for a United States national otherwise eligible for appointment as a cadet or midshipman under section 2107(a) of this title or as

a cadet under section 2107a of this title, when the Secretary determines that the national security so requires, but only for an original appointment in a grade below the grade of major or lieutenant commander.

(Added Pub. L. 96-513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97-22, § 3(b), July 10, 1981, 95 Stat. 124; Pub. L. 97-295, § 1(7), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 102-190, div. A, title V, § 501, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103-160, div. A, title V, § 510, Nov. 30, 1993, 107 Stat. 1648; Pub. L. 108-375, div. A, title V, § 501(a)(1)-(3)(A), Oct. 28, 2004, 118 Stat. 1872; Pub. L. 109-163, div. A, title V, § 534(c), Jan. 6, 2006, 119 Stat. 3248; Pub. L. 111-383, div. A, title V, § 501(a), Jan. 7, 2011, 124 Stat. 4206.)

AMENDMENTS

2011—Subsec. (d)(2). Pub. L. 111-383 struck out “reserve” before “commissioned officer”.

2006—Subsec. (f). Pub. L. 109-163 inserted “, or for a United States national otherwise eligible for appointment as a cadet or midshipman under section 2107(a) of this title or as a cadet under section 2107a of this title,” after “for permanent residence”.

2004—Subsec. (a)(2). Pub. L. 108-375, § 501(a)(2), substituted “sixty-second birthday” for “fifty-fifth birthday”.

Subsec. (e). Pub. L. 108-375, § 501(a)(1), struck out subsec. (e) which read as follows: “After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.”

Subsec. (f). Pub. L. 108-375, § 501(a)(3)(A), added subsec. (f).

1993—Subsec. (d). Pub. L. 103-160 designated existing provisions as par. (1) and added par. (2).

1991—Subsec. (e). Pub. L. 102-190 added subsec. (e).

1982—Pub. L. 97-295 inserted “a” after “original appointment as” in section catchline.

1981—Subsec. (d). Pub. L. 97-22 substituted “medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps” for “medical officer or dental officer or as a chaplain”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 501(a)(1) of Pub. L. 108-375 effective on May 1, 2005, and amendment by section 501(a)(2), (3)(A) of Pub. L. 108-375 effective on the first day of the first month beginning more than 180 days after Oct. 28, 2004, see section 501(g) of Pub. L. 108-375, set out as a note under section 531 of this title.

APPOINTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS AS COMMISSIONED OFFICERS

Pub. L. 98-94, title X, § 1006, Sept. 24, 1983, 97 Stat. 661, provided that a citizen of the Northern Mariana Islands who indicates in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States, and who is otherwise qualified for military service under applicable laws and regulations, may be appointed as an officer in the Armed Forces of the United States, may be appointed or enrolled in the Senior Reserve Officers' Training Corps program of any of the Armed Forces under chapter 103 of title 10, United States Code, and may be selected to be a participant in the Armed Forces Health Professions Scholarship program under chapter 105 of such title, and that this section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands. The Commonwealth was established as of 12:01 a.m., Nov. 4, 1986, see section 2(a), (b) of Proc. No. 5564, set out as a note

under section 1801 of Title 48, Territories and Insular Possessions.

§ 533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional

year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

- (1) initial grade as a regular officer;
- (2) rank in grade; and
- (3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advocate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to