

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 com-

missioned 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 designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall—

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

(Added Pub. L. 96-513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2846; amended Pub. L. 97-22, §3(c), July 10, 1981, 95 Stat. 125; Pub. L. 98-94, title X, §1007(c)(1), Sept. 24, 1983, 97 Stat. 662; Pub. L.

100-180, div. A, title VII, §714(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103-160, div. A, title V, §509(a), Nov. 30, 1993, 107 Stat. 1647.)

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103-160, §509(a)(1), in second sentence, substituted “In determining” for “Except as provided in clause (E), in determining” and “advanced education required” for “postsecondary education in excess of four that are required”.

Subsec. (b)(1)(E), (F). Pub. L. 103-160, §509(a)(2), (3), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: “Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of pre-professional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed, designated, or assigned was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.”

1987—Subsec. (b)(1)(B). Pub. L. 100-180 designated existing provisions as cl. (i) and added cl. (ii).

1983—Subsec. (a)(1). Pub. L. 98-94 inserted “, the National Oceanic and Atmospheric Administration, or the Public Health Service”.

1981—Subsec. (b)(1)(A). Pub. L. 97-22, §3(c)(1), inserted “, designated, or assigned” in first sentence after “persons appointed” and substituted “Except as provided in clause (E), 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 postsecondary education in excess of four that are 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” for “(Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary concerned shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree”.

Subsec. (b)(1)(B). Pub. L. 97-22, §3(c)(2), substituted “appointment, designation, or assignment, if such advanced education” for “appointment as an officer, if such advanced education”.

Subsec. (b)(1)(E). Pub. L. 97-22, §3(c)(3), substituted “person being appointed, designated, or assigned was admitted” for “person being appointed was admitted”.

Subsec. (d)(1). Pub. L. 97-22, §3(c)(4), inserted provision that, 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.

Subsec. (f). Pub. L. 97-22, §3(c)(5), substituted “A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall (1) in the case of an officer on the active-duty list imme-

diately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and (2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer” for “An officer of a reserve component who receives an original appointment as an officer (other than a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall be appointed in the grade and with the date of rank to which he would have been entitled had he been serving on active duty as an officer of a reserve component on the date of such original appointment as a regular officer”.

RATIFICATION OF SERVICE CREDIT AWARDED PRIOR TO NOVEMBER 30, 1993

Pub. L. 103-160, div. A, title V, § 509(e), Nov. 30, 1993, 107 Stat. 1648, provided that: “To the extent that service credit awarded before the date of the enactment of this Act [Nov. 30, 1993] under section 533, 3353, 5600, or 8353 of title 10, United States Code, based on advanced education in medicine or dentistry was awarded consistent with that section as amended by this section (whether or not properly awarded under that section as in effect before such amendment), the awarding of that service credit is hereby ratified.”

TRANSITION PROVISION UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For savings provision relating to constructive service previously granted, see section 625 of Pub. L. 96-513, set out as a note under section 611 of this title.

§ 541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
541(a)	10:1092c-1(a) (1st 59 words of 1st sentence). 10:1856(a) (1st 59 words of 1st sentence). 34:1057-1(a) (1st 59 words of 1st sentence).	Apr. 1, 1954, ch. 127, § 8, 68 Stat. 48.
541(b)	10:1092c-1(a) (1st sentence, less 1st 59 words). 10:1856(a) (1st sentence, less 1st 59 words). 34:1057-1(a) (1st sentence, less 1st 59 words).	
541(c)	10:1092c-1 (less (a)). 10:1856 (less (a)). 34:1057-1 (less (a)).	

In subsection (a), the words “is entitled * * * to” are substituted for the words “shall * * * be afforded an opportunity to”.

In subsection (b), the words “is entitled” are substituted for the word “shall”.

In subsection (c), the words “and fair” are omitted as surplusage. 10:1092c-1(c), 10:1856(c), and 34:1057-1(c) are omitted as covered by section 51(a) of the bill.

EFFECTIVE DATE

Section 52(a) of act Aug. 10, 1956, provided that: “Section 541 of title 10, United States Code, enacted by section 1 of this Act, takes effect (1) in the year in which the initial class graduates from the United States Air Force Academy, or (2) upon the rescission of the agreement under which graduates of the United States Military Academy and the United States Naval Academy may volunteer for appointment in the Air Force, whichever is earlier.”

APPOINTMENT OF UNITED STATES MILITARY ACADEMY GRADUATES IN AIR FORCE

Act Aug. 10, 1956, ch. 1041, § 44, 70A Stat. 637, provided that a cadet who had graduated from the United States Military Academy could, upon graduation and before the effective date of section 541 of this title, be appointed a second lieutenant in the Regular Air Force, and set forth provisions relating to date of appointment, service credit, rank among graduates, and increase in authorized strength.

[§§ 555 to 565. Repealed. Pub. L. 102-190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1492]

Section 555, acts Aug. 10, 1956, ch. 1041, 70A Stat. 20; Sept. 7, 1962, Pub. L. 87-649, §§ 6(f)(2), 14c(2), 76 Stat. 494, 501; July 30, 1977, Pub. L. 95-79, title III, § 302(a)(4), 91 Stat. 326; Nov. 8, 1985, Pub. L. 99-145, title V, § 531(a), title XIII, § 1303(a)(5), 99 Stat. 633, 739, related to warrant officer grades. See section 571(a) and (b) of this title.

Section 556, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to credit for service of persons originally appointed in regular warrant officer grades under section 555 of this title. See section 572 of this title.

Section 557, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to qualifications for promotion of regular warrant officers.

Section 558, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to appointment of selection boards to consider promotions of regular warrant officers. See section 573(a), (b), (e), and (f) of this title.

Section 559, act Aug. 10, 1956, ch. 1041, 70A Stat. 21, related to eligibility of regular warrant officers for promotion.

Section 560, acts Aug. 10, 1956, ch. 1041, 70A Stat. 21; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(3), 72 Stat. 1564, related to selection procedure for promotion of warrant officers. See section 576(a) to (e) of this title.

Section 561, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effect of failure of selection of regular warrant officers for promotion. See section 577 of this title.