

TEMPORARY INCREASE IN NUMBER OF GENERAL AND
FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY

Temporary increases in the number of officers authorized in particular grades under this section were contained in the following authorization acts:

Pub. L. 99-661, div. A, title V, §511, Nov. 14, 1986, 100 Stat. 3869.

Pub. L. 99-570, title III, §3058, Oct. 27, 1986, 100 Stat. 3207-79.

Pub. L. 99-145, title V, §515, Nov. 8, 1985, 99 Stat. 630.

Pub. L. 98-525, title V, §511, Oct. 19, 1984, 98 Stat. 2521.

Pub. L. 98-94, title X, §1001, Sept. 24, 1983, 97 Stat. 654.

Pub. L. 97-252, title XI, §1116, Sept. 8, 1982, 96 Stat. 750.

§ 526. Authorized strength: general and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the numbers of flag officers on active duty in the Navy, may not exceed the number specified for the armed force concerned as follows:

- (1) For the Army, 230.
- (2) For the Navy, 162.
- (3) For the Air Force, 208.
- (4) For the Marine Corps, 60.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Secretary of Defense may designate up to 310 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a). The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.

(2) Unless the Secretary of Defense determines that a lower number is in the best interest of the Department, the minimum number of officers serving in positions designated under paragraph (1) for each armed force shall be as follows:

- (A) For the Army, 85.
- (B) For the Navy, 61.
- (C) For the Air Force, 76.
- (D) For the Marine Corps, 21.

(3) The number excluded under paragraph (1) and serving in positions designated under that paragraph—

(A) in the grade of general or admiral may not exceed 20;

(B) in a grade above the grade of major general or rear admiral may not exceed 68; and

(C) in the grade of major general or rear admiral may not exceed 144.

(4) Not later than 30 days after determining to raise or lower a number specified in paragraph (2), the Secretary of Defense shall notify the Committees on Armed Services of the Senate and the House of Representatives of such determination.

(5)(A) The Chairman of the Joint Chiefs of Staff may designate up to 15 general and flag officer positions in the unified and specified combatant commands, and up to three general and flag officer positions on the Joint Staff, as positions to be held only by reserve component officers who are in a general or flag officer grade

below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for the purposes of the limitations under subsection (a) and under section 525 of this title if the officer was selected for service in that position in accordance with the procedures specified in subparagraph (C).

(C) Whenever a vacancy occurs, or is anticipated to occur, in a position designated under subparagraph (A)—

(i) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army reserve component officer, the Secretary of the Navy to submit the name of at least one Navy Reserve officer and the name of at least one Marine Corps Reserve officer, and the Secretary of the Air Force to submit the name of at least one Air Force reserve component officer for consideration by the Secretary for assignment to that position; and

(ii) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to clause (i)) for consideration by the Secretary for assignment to that position.

(D) Whenever the Secretaries of the military departments are required to submit the names of officers under subparagraph (C)(i), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that subparagraph (and of any officer whose name the Chairman submits to the Secretary under subparagraph (C)(ii) for consideration for the same vacancy).

(E) Subparagraph (B) does not apply in the case of an officer serving in a position designated under subparagraph (A) if the Secretary of Defense, when considering officers for assignment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that assignment from each Secretary of a military department who (pursuant to subparagraph (C)) was required to make such a recommendation.

[C] Repealed. Pub. L. 107-314, div. A, title X, §1041(a)(3), Dec. 2, 2002, 116 Stat. 2645.]

(d) EXCLUSION OF CERTAIN RESERVE OFFICERS.—(1) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(2) The limitations of this section also do not apply to a number, as specified by the Secretary of the military department concerned, of reserve component general or flag officers authorized to serve on active duty for a period of not more than 365 days. The number so specified for an armed force may not exceed the number equal to 10 percent of the authorized number of general or flag officers, as the case may be, of that

armed force under section 12004 of this title. In determining such number, any fraction shall be rounded down to the next whole number, except that such number shall be at least one.

(3) The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for a period in excess of 365 days but not to exceed three years, except that the number of such officers from each reserve component who are covered by this paragraph and not serving in a position that is a joint duty assignment for purposes of chapter 38 of this title may not exceed 5 per component, unless authorized by the Secretary of Defense.

(e) EXCLUSION OF CERTAIN OFFICERS PENDING SEPARATION OR RETIREMENT OR BETWEEN SENIOR POSITIONS.—The limitations of this section do not apply to a general or flag officer who is covered by an exclusion under section 525(e) of this title.

(f) EXCLUSION OF ATTENDING PHYSICIAN TO THE CONGRESS.—The limitations of this section do not apply to the general or flag officer who is serving as Attending Physician to the Congress.

(g) TEMPORARY EXCLUSION FOR ASSIGNMENT TO CERTAIN TEMPORARY BILLETS.—(1) The limitations in subsection (a) and in section 525(a) of this title do not apply to a general or flag officer assigned to a temporary joint duty assignment designated by the Secretary of Defense.

(2) A general or flag officer assigned to a temporary joint duty assignment as described in paragraph (1) may not be excluded under this subsection from the limitations in subsection (a) for a period of longer than one year.

(h) EXCLUSION OF OFFICERS DEPARTING FROM JOINT DUTY ASSIGNMENTS.—The limitations in subsection (a) do not apply to an officer released from a joint duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers on active duty from each armed force may be covered by an extension under this sentence at the same time.

(Added Pub. L. 100-370, §1(b)(1)(B), July 19, 1988, 102 Stat. 840; amended Pub. L. 101-510, div. A, title IV, §403(a), Nov. 5, 1990, 104 Stat. 1545; Pub. L. 102-484, div. A, title IV, §403, Oct. 23, 1992, 106 Stat. 2398; Pub. L. 103-337, div. A, title IV, §404, title V, §512, Oct. 5, 1994, 108 Stat. 2744, 2752; Pub. L. 104-106, div. A, title XV, §§1502(a)(1), 1503(a)(3), Feb. 10, 1996, 110 Stat. 502, 510; Pub. L. 104-201, div. A, title IV, §405, Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105-261, div. A, title IV, §405, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106-65, div. A, title V, §553, title X, §1067(1), Oct. 5, 1999, 113 Stat. 615, 774; Pub. L. 107-314, div. A, title IV, §405(c), title X, §1041(a)(3), Dec. 2, 2002, 116 Stat. 2526, 2645; Pub. L. 108-136, div. A, title V, §504(c), Nov. 24, 2003, 117 Stat. 1457; Pub. L. 109-163, div. A, title V, §§503(b), 510, 515(b)(1)(C), Jan. 6, 2006, 119 Stat. 3226, 3231, 3233; Pub. L. 109-364, div. A, title V, §507(c), Oct. 17, 2006, 120 Stat. 2180; Pub. L. 110-181, div. A, title V, §502, title XVIII, §1824(c), Jan. 28, 2008, 122 Stat. 95, 501; Pub. L. 110-417, [div. A], title V, §§503(a)-(c), 525, Oct. 14, 2008, 122 Stat. 4433, 4448; Pub. L. 111-84, div. A, title V, §502(e)-(g), Oct. 28, 2009, 123 Stat. 2275, 2276; Pub.

L. 112-81, div. A, title V, §502(b)(1), (c)(1), Dec. 31, 2011, 125 Stat. 1387; Pub. L. 112-239, div. A, title V, §501(a), Jan. 2, 2013, 126 Stat. 1714.)

AMENDMENT OF SUBSECTIONS (a) AND (b)(2)(C)

Pub. L. 112-81, div. A, title V, §502(b)(1), (3), Dec. 31, 2011, 125 Stat. 1387, provided that effective Oct. 1, 2013, this section is amended:

(1) in subsection (a)—

(A) in paragraph (1), by striking “230” and inserting “231”;

(B) in paragraph (2), by striking “160” and inserting “161”;

(C) in paragraph (3), by striking “208” and inserting “198”;

(D) in paragraph (4), by striking “60” and inserting “61”; and

(2) in subsection (b)(2)(C), by striking “76” and inserting “73”.

See 2011 Amendment notes below.

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 95-79, title VIII, §811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96-107, title VIII, §817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96-342, title X, §1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97-86, title VI, §602, Dec. 1, 1981, 95 Stat. 1110.

Present law (section 811(a) of Public Law 95-79, as amended) provides that the authority to suspend the limitation on the number of general and flag officers who may be serving on active duty applies during war or national emergency. In codifying the limitation (in section 526 of title 10 as proposed to be added by section 1(b) of the bill), the committee determined that the same war and emergency waiver authority as applies to other limitations on the number of officers on active duty under the existing 10 U.S.C. 526 (redesignated as 10 U.S.C. 527 by the bill) should apply with respect to this limitation and accordingly amended the suspension authority in present law to include the codified general and flag officer limitation. This authority is slightly different from the waiver authority in the source law in that the suspension would expire 2 years after it takes effect or 1 year after the end of the war or national emergency, whichever occurs first, rather than upon termination of the war or emergency.

PRIOR PROVISIONS

A prior section 526 was renumbered section 527 of this title.

AMENDMENTS

2013—Subsec. (a)(2). Pub. L. 112-239 substituted “162” for “160”.

2011—Subsec. (a). Pub. L. 112-81, §502(b)(1)(A), substituted “231” for “230” in par. (1), “161” for “160” in par. (2), “198” for “208” in par. (3), and “61” for “60” in par. (4).

Subsec. (b)(1). Pub. L. 112-81, §502(c)(1), substituted “310” for “324”.

Subsec. (b)(2)(C). Pub. L. 112-81, §502(b)(1)(B), substituted “73” for “76”.

2009—Subsec. (a). Pub. L. 111-84, §502(e), substituted “230” for “307” in par. (1), “160” for “216” in par. (2), “208” for “279” in par. (3), and “60” for “81” in par. (4).

Subsec. (b)(1). Pub. L. 111-84, §502(f)(1), substituted “Secretary of Defense” for “Chairman of the Joint Chiefs of Staff”, “324” for “65”, and “The Secretary of Defense shall allocate those exclusions to the armed forces based on the number of general or flag officers required from each armed force for assignment to these designated positions.” for “Officers in positions so designated shall not be counted for the purposes of those limitations.”

Subsec. (b)(2) to (5). Pub. L. 111-84, §502(f)(2), (3), added pars. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (d)(3). Pub. L. 111–84, § 502(g)(1), added par. (3).
Subsecs. (g), (h). Pub. L. 111–84, § 502(g)(2), added subsecs. (g) and (h).

2008—Subsec. (a)(1). Pub. L. 110–417, § 503(a), substituted “307” for “302”.

Subsec. (a)(4). Pub. L. 110–417, § 503(b), substituted “81” for “80”.

Subsec. (b)(1). Pub. L. 110–417, § 503(c), substituted “65” for “12”.

Subsec. (b)(2)(A). Pub. L. 110–417, § 525, substituted “up to three general and flag officer positions” for “a general and flag officer position”.

Pub. L. 110–181, § 1824(c), substituted “15 general and flag officer positions in” for “10 general and flag officer positions on the staffs of the commanders of”.

Subsec. (d). Pub. L. 110–181, § 502, designated existing provisions as par. (1) and added par. (2).

2006—Subsec. (b)(2)(A). Pub. L. 109–163, § 510, inserted “, and a general and flag officer position on the Joint Staff,” after “combatant commands”.

Subsec. (b)(2)(C)(i). Pub. L. 109–163, § 515(b)(1)(C), substituted “Navy Reserve” for “Naval Reserve”.

Subsec. (d). Pub. L. 109–163, § 503(b)(2), substituted “Certain Reserve Officers” for “Certain Officers” in heading.

Subsec. (e). Pub. L. 109–163, § 503(b)(1), added subsec. (e).

Subsec. (f). Pub. L. 109–364 added subsec. (f).

2003—Subsec. (b)(3). Pub. L. 108–136 struck out par. (3) which read as follows: “This subsection shall cease to be effective on December 31, 2004.”

2002—Subsec. (b)(3). Pub. L. 107–314, § 405(c), substituted “December 31, 2004” for “October 1, 2002”.

Subsec. (c). Pub. L. 107–314, § 1041(a)(3), struck out heading and text of subsec. (c). Text read as follows:

“(1) Not later than 60 days before an action specified in paragraph (2) may become effective, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing notice of the intended action and an analytically based justification for the intended action.

“(2) Paragraph (1) applies in the case of the following actions:

“(A) A change in the grade authorized as of July 1, 1994, for a general officer position in the National Guard Bureau, a general or flag officer position in the Office of a Chief of a reserve component, or a general or flag officer position in the headquarters of a reserve component command.

“(B) Assignment of a reserve component officer to a general officer position in the National Guard Bureau, to a general or flag officer position in the Office of a Chief of a reserve component, or to a general or flag officer position in the headquarters of a reserve component command in a grade other than the grade authorized for that position as of July 1, 1994.

“(C) Assignment of an officer other than a general or flag officer as the military executive to the Reserve Forces Policy Board.”

1999—Subsec. (b)(2), (3). Pub. L. 106–65, § 553, added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(1). Pub. L. 106–65, § 1067(1), substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1998—Subsec. (b)(2). Pub. L. 105–261 substituted “October 1, 2002” for “October 1, 1998”.

1996—Subsec. (a)(1) to (3). Pub. L. 104–106, § 1503(a)(3)(A), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

“(1) For the Army, 386 before October 1, 1995, and 302 on and after that date.

“(2) For the Navy, 250 before October 1, 1995, and 216 on and after that date.

“(3) For the Air Force, 326 before October 1, 1995, and 279 on and after that date.”

Subsec. (a)(4). Pub. L. 104–201 substituted “80” for “68”.

Subsec. (b). Pub. L. 104–106, § 1503(a)(3)(B)–(D), redesignated subsec. (c) as (b), struck out “that are applicable

on and after October 1, 1995” after “limitations in subsection (a)”, and struck out former subsec. (b) which read as follows: “TRANSFERS BETWEEN SERVICES.—During the period before October 1, 1995, the Secretary of Defense may increase the number of general officers on active duty in the Army, Air Force, or Marine Corps, or the number of flag officers on active duty in the Navy, above the applicable number specified in subsection (a) by a total of not more than five. Whenever any such increase is made, the Secretary shall make a corresponding reduction in the number of such officers that may serve on active duty in general or flag officer grades in one of the other armed forces.”

Subsec. (c). Pub. L. 104–106, § 1503(a)(3)(C), (E), redesignated subsec. (d) as (c) and, in par. (2)(B), struck out “the” after “general officer position in the” and inserted “to” after “reserve component, or” and “than” after “in a grade other”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 104–106, § 1503(a)(3)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 104–106, § 1502(a)(1), substituted “Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives” for “Committees on Armed Services of the Senate and House of Representatives”.

Subsec. (e). Pub. L. 104–106, § 1503(a)(3)(C), redesignated subsec. (e) as (d).

1994—Subsec. (a)(4). Pub. L. 103–337, § 404, struck out “before October 1, 1995, and 61 on and after that date” after “Corps, 68”.

Subsecs. (d), (e). Pub. L. 103–337, § 512, added subsecs. (d) and (e).

1992—Subsec. (b). Pub. L. 102–484, § 403(b), inserted heading.

Subsec. (c). Pub. L. 102–484, § 403(a), added subsec. (c).

1990—Pub. L. 101–510 amended section generally. Prior to amendment, text read as follows: “The total number of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy may not exceed 1,073.”

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 502(b)(1) of Pub. L. 112–81 effective Oct. 1, 2013, except amendment by section 502(b)(1)(A)(iv) effective Oct. 1, 2012, see section 502(b)(3) of Pub. L. 112–81, as amended, set out as a note under section 525 of this title.

Pub. L. 112–81, div. A, title V, § 502(c)(2), Dec. 31, 2011, 125 Stat. 1387, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 2012.”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–510, div. A, title IV, § 403(a), Nov. 5, 1990, 104 Stat. 1545, provided that the amendment made by that section is effective Sept. 30, 1991.

ACQUISITION AND CONTRACTING BILLETS

Pub. L. 110–417, [div. A], title V, § 503(e), Oct. 14, 2008, 122 Stat. 4434, provided that:

“(1) RESERVATION OF ARMY INCREASE.—The increase in the number of general officers on active duty in the Army, as authorized by the amendment made by subsection (a) [amending this section] is reserved for general officers in the Army who serve in an acquisition position.

“(2) RESERVATION OF PORTION OF INCREASE IN JOINT DUTY ASSIGNMENTS EXCLUDED FROM LIMITATION.—Of the increase in the number of general officer and flag officer joint duty assignments that may be designated for exclusion from the limitations on the number of general officers and flag officers on active duty, as authorized by the amendment made by subsection (c) [amending this section], five of the designated assignments are reserved for general officers or flag officers who serve in an acquisition position, including one assignment in the Defense Contract Management Agency.”

§ 527. Authority to suspend sections 523, 525, and 526

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 525, or 526 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2845, § 526; renumbered § 527 and amended Pub. L. 100–370, § 1(b)(1)(A), (2), July 19, 1988, 102 Stat. 840; Pub. L. 103–337, div. A, title XVI, § 1671(c)(4), Oct. 5, 1994, 108 Stat. 3014.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§ 1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

AMENDMENTS

1994—Pub. L. 103–337 struck out “524,” after “523,” in section catchline and in text.

1988—Pub. L. 100–370 renumbered section 526 of this title as this section, substituted “524, 525, and 526” for “524, and 525” in section catchline, and “524, 525, or 526” for “524, or 525” in text.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section to suspend operation of sections 523, 524 [now 12011], and 525 of this title, relating to authorized strength of commissioned officers, delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, the exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure that actions taken pursuant to any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§ 2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of De-

fense by section 4 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§ 201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of section 517, 523, 524, 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in this section.

§ 528. Officers serving in certain intelligence positions: military status; application of distribution and strength limitations; pay and allowances

(a) MILITARY STATUS.—An officer of the armed forces, while serving in a position covered by this section—

(1) shall not be subject to supervision or control by the Secretary of Defense or any other officer or employee of the Department of Defense, except as directed by the Secretary of Defense concerning reassignment from such position; and

(2) may not exercise, by reason of the officer's status as an officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law.

(b) DIRECTOR AND DEPUTY DIRECTOR OF CIA.—When the position of Director or Deputy Director of the Central Intelligence Agency is held by an officer of the armed forces, the position, so long as the officer serves in the position, shall be designated, pursuant to subsection (b) of section 526 of this title, as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section.

(c) ASSOCIATE DIRECTOR OF MILITARY AFFAIRS, CIA.—When the position of Associate Director of Military Affairs, Central Intelligence Agency, or any successor position, is held by an officer of the armed forces, the position, so long as the officer serves in the position, shall be designated, pursuant to subsection (b) of section 526 of this title, as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section.

(d) OFFICERS SERVING IN OFFICE OF DNI.—When a position in the Office of the Director of National Intelligence designated by agreement between the Secretary of Defense and the Director of National Intelligence is held by a general officer or flag officer of the armed forces, the position, so long as the officer serves in the position, shall be designated, pursuant to subsection (b) of section 526 of this title, as one of the general officer and flag officer positions to be excluded from the limitations in subsection (a) of such section. However, not more than five of such positions may be included among the excluded positions at any time.

(e) EFFECT OF APPOINTMENT.—Except as provided in subsection (a), the appointment or assignment of an officer of the armed forces to a