

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 Defense 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 position covered by this section shall not affect—

(1) the status, position, rank, or grade of such officer in the armed forces; or

(2) any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

(f) **MILITARY PAY AND ALLOWANCES.**—(1) An officer of the armed forces on active duty who is appointed or assigned to a position covered by this section shall, while serving in such position and while remaining on active duty, continue to receive military pay and allowances and shall not receive the pay prescribed for such position.

(2) Funds from which pay and allowances under paragraph (1) are paid to an officer while so serving shall be reimbursed as follows:

(A) For an officer serving in a position within the Central Intelligence Agency, such reimbursement shall be made from funds available to the Director of the Central Intelligence Agency.

(B) For an officer serving in a position within the Office of the Director of National Intelligence, such reimbursement shall be made from funds available to the Director of National Intelligence.

(g) **COVERED POSITIONS.**—The positions covered by this section are the positions specified in subsections (b) and (c) and the positions designated under subsection (d).

(Added Pub. L. 108-136, div. A, title V, § 507(a), Nov. 24, 2003, 117 Stat. 1458; amended Pub. L. 109-163, div. A, title V, § 507(a), Jan. 6, 2006, 119 Stat. 3228; Pub. L. 109-364, div. A, title V, § 501(a), (b)(1), Oct. 17, 2006, 120 Stat. 2175, 2176; Pub. L. 110-417, [div. A], title IX, § 933, Oct. 14, 2008, 122 Stat. 4576; Pub. L. 111-259, title VIII, § 803, Oct. 7, 2010, 124 Stat. 2746; Pub. L. 112-81, div. A, title V, § 502(d)(1), (2)(A), Dec. 31, 2011, 125 Stat. 1387, 1388.)

PRIOR PROVISIONS

A prior section 528, added Pub. L. 103-337, div. A, title IV, § 405(b)(1), Oct. 5, 1994, 108 Stat. 2744; amended Pub. L. 104-106, div. A, title IV, § 403(b), title XV, § 1503(a)(4), Feb. 10, 1996, 110 Stat. 287, 511; Pub. L. 104-201, div. A, title X, § 1074(a)(3), Sept. 23, 1996, 110 Stat. 2658, which related to limitation on number of officers on active duty in grades of general and admiral, was repealed by Pub. L. 107-107, div. A, title V, § 501(a), Dec. 28, 2001, 115 Stat. 1079.

AMENDMENTS

2011—Pub. L. 112-81, § 502(d)(2)(A), substituted “Officers serving in certain intelligence positions: military

status; application of distribution and strength limitations; pay and allowances” for “Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances” in section catchline.

Subsecs. (b) to (d). Pub. L. 112-81, § 502(d)(1), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which related to Director and Deputy Director of CIA, Associate Director of Military Affairs of CIA, and Officers Serving in the Office of DNI, respectively.

2010—Subsec. (c). Pub. L. 111-259 substituted “Associate Director of Military Affairs, CIA” for “Associate Director of CIA for Military Affairs” in heading and “Associate Director of Military Affairs, Central Intelligence Agency, or any successor position” for “Associate Director of the Central Intelligence Agency for Military Affairs” in text.

2008—Subsec. (c). Pub. L. 110-417 substituted “Military Affairs” for “Military Support” in heading and text.

2006—Pub. L. 109-364, § 501(b)(1), amended section catchline generally, substituting “Officers serving in certain intelligence positions: military status; exclusion from distribution and strength limitations; pay and allowances” for “Exclusion: officers serving in certain intelligence positions”.

Pub. L. 109-163 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) When none of the individuals serving in a position specified in subsection (b) is an officer of the armed forces, an officer of the armed forces assigned to the position of Associate Director of Central Intelligence for Military Support, while serving in that position, shall not be counted against the numbers and percentages of officers of the grade of that officer authorized for that officer’s armed force.

“(b) The positions referred to in subsection (a) are the following:

- “(1) Director of Central Intelligence.
- “(2) Deputy Director of Central Intelligence.
- “(3) Deputy Director of Central Intelligence for Community Management.”

Subsecs. (a), (b). Pub. L. 109-364, § 501(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

“(a) EXCLUSION OF OFFICER SERVING IN CERTAIN CIA POSITIONS.—When either of the individuals serving in a position specified in subsection (b) is an officer of the armed forces, one of those officers, while serving in that position, shall be excluded from the limitations in sections 525 and 526 of this title.

“(b) COVERED POSITIONS.—The positions referred to in this subsection are the following:

- “(1) Director of the Central Intelligence Agency.
- “(2) Deputy Director of the Central Intelligence Agency.”

Subsecs. (e) to (g). Pub. L. 109-364, § 501(a)(2), added subsecs. (e) to (g).

CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.	
531.	Original appointments of commissioned officers.
532.	Qualifications for original appointment as a commissioned officer.
533.	Service credit upon original appointment as a commissioned officer.
541.	Graduates of the United States Military, Naval, and Air Force Academies.

[555 to 565. Repealed.]

AMENDMENTS

1991—Pub. L. 102-190, div. A, title XI, § 1112(b)(1), Dec. 5, 1991, 105 Stat. 1501, substituted “ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES” for “APPOINTMENTS IN REGULAR COMPONENTS” as chap-

ter heading, struck out analysis of subchapters listing subchapter I “Original Appointments of Regular Officers in Grades above Warrant Officer Grades” and subchapter II “Appointments of Regular Warrant Officers”, and struck out subchapter I heading.

1980—Pub. L. 96-513, title I, § 104(a), Dec. 12, 1980, 94 Stat. 2845, inserted an analysis of subchapters immediately following chapter heading, added subchapter I heading, and, in analysis of sections following subchapter I heading, added items 531, 532, and 533 preceding item 541, re-enacted item 541 without change, and struck out, following item 541, items 555 to 565. The items 555 to 565 formerly set out in the analysis of sections immediately following chapter heading were transferred to a position following a new heading for subchapter II preceding section 555.

§ 531. Original appointments of commissioned officers

(a)(1) Original appointments in the grades of second lieutenant, first lieutenant, and captain 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).