

fore the date of the waiver, as appropriate in an individual case.

(Added Pub. L. 102-484, div. A, title V, §515(a), Oct. 23, 1992, 106 Stat. 2406, §596; renumbered §12205 and amended Pub. L. 103-337, div. A, title V, §§519, 520, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2755, 2990; Pub. L. 104-201, div. A, title V, §§504, 505, title X, §1074(a)(22), Sept. 23, 1996, 110 Stat. 2512, 2660; Pub. L. 107-107, div. A, title V, §512(a), Dec. 28, 2001, 115 Stat. 1092; Pub. L. 109-163, div. A, title V, §515(b)(1)(KK), Jan. 6, 2006, 119 Stat. 3234.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102-190, div. A, title V, §523, Dec. 5, 1991, 105 Stat. 1363, which was set out as a note under section 591 [now 12201] of this title, prior to repeal by Pub. L. 103-35, §203(a).

AMENDMENTS

2006—Subsecs. (a), (b)(2), (3), (c)(2)(C). Pub. L. 109-163 substituted “Navy Reserve” for “Naval Reserve”.

2001—Subsec. (d). Pub. L. 107-107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104-201, §1074(a)(22), substituted “No person” for “After September 30, 1995, no person”.

Subsec. (b)(3). Pub. L. 104-201, §505, inserted “or the Seaman to Admiral program” after “(NAVCAD) program”.

Subsec. (c)(2)(C). Pub. L. 104-201, §504, substituted “eight years” for “three years”.

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 596 of this title as this section.

Subsec. (a). Pub. L. 103-337, §519(1), substituted “a qualifying educational institution” for “an accredited educational institution”.

Subsec. (b)(2), (3). Pub. L. 103-337, §520(b), substituted “a person” for “an individual”.

Subsec. (b)(5). Pub. L. 103-337, §520(a), added par. (5).
Subsec. (c). Pub. L. 103-337, §519(2), added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title V, §512(b), Dec. 28, 2001, 115 Stat. 1092, provided that: “Subsection (d) of section 12205 of title 10, United States Code, as added by subsection (a), shall apply with respect to officers appointed before, on, or after the date of the enactment of this Act [Dec. 28, 2001].”

AUTHORITY FOR TEMPORARY WAIVER FOR CERTAIN ARMY RESERVE OFFICERS OF BACCALAUREATE DEGREE REQUIREMENT FOR PROMOTION OF RESERVE OFFICERS

Pub. L. 105-261, div. A, title V, §516, Oct. 17, 1998, 112 Stat. 2008, provided that:

“(a) WAIVER AUTHORITY FOR ARMY OCS GRADUATES.—The Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to any officer who before the date of the enactment of this Act [Oct. 17, 1998] was commissioned through the Army Officer Candidate School. Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than 2 years after the waiver is granted. The Secretary may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

“(b) EXPIRATION OF AUTHORITY.—A waiver under this section may not be granted after September 30, 2000.”

§ 12206. Commissioned officers: appointment of former commissioned officers

Under regulations prescribed by the Secretary of Defense, a person who is a former commis-

sioned officer may, if otherwise qualified, be appointed as a reserve officer of the Army, Navy, Air Force, or Marine Corps. A person so appointed—

(1) may be placed on the reserve active-status list of that armed force in the grade equivalent to the permanent regular or reserve grade, and in the same competitive category, in which the person previously served satisfactorily on active duty or in an active status; and

(2) may be credited for the purpose of determining date of rank under section 741(d) of this title with service in grade equal to that held by that person when discharged or separated.

(Added §596a and renumbered §12206, Pub. L. 103-337, div. A, title XVI, §§1633, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990.)

Editorial Notes

AMENDMENTS

1994—Pub. L. 103-337, §1662(c)(2), renumbered section 596a of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 12207. Commissioned officers: service credit upon original appointment

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

(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 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) or (e).

(b)(1) Under regulations prescribed by the Secretary of Defense, a person who is receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps, and who has special training or experience, or advanced education (if applicable), shall be credited 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 or designated in, or as-

signed to, 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 subparagraph 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 such 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 health 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 speciality required by the armed force concerned.

(D) Additional credit as follows:

(i) For special training or experience in a particular officer field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned.

(ii) During fiscal years 2021 through 2025, for advanced education in an officer field so designated, if such education is directly related to the operational needs of the armed force concerned.

(E) Additional credit for experience as a physician or dentist, if appointed, assigned, or designated as a medical or dental officer.

(2)(A) If the Secretary of Defense determines that the number of officers in a health profession described in subparagraph (B) who are serving in an active status in a reserve component of the Army, Navy, or Air Force in grades below major or lieutenant commander is critically below the number needed in such health profession by such reserve component in such grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment as an officer for service in such health profession with a period of constructive credit in such amount (in addition to any amount credited such person under paragraph (1)) as will result in the grade of such person being that of captain or, in the case of the Navy Reserve, lieutenant.

(B) The types of health professions referred to in subparagraph (A) include the following:

(i) Any health profession performed by officers in the Medical Corps of the Army or the Navy or by officers of the Air Force designated as a medical officer.

(ii) Any health profession performed by officers in the Dental Corps of the Army or the Navy or by officers of the Air Force designated as a dental officer.

(iii) Any health profession performed by officers in the Medical Service Corps of the Army or the Navy or by officers of the Air Force designated as a medical service officer or biomedical sciences officer.

(iv) Any health profession performed by officers in the Army Medical Specialist Corps.

(v) Any health profession performed by officers of the Nurse Corps of the Army or the Navy or by officers of the Air Force designated as a nurse.

(vi) Any health profession performed by officers in the Veterinary Corps of the Army or by officers designated as a veterinary officer.

(3) The amount of constructive service credit credited to an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment as a reserve officer of the Army, Air Force, or Marine Corps in the grade of colonel or as a reserve officer of the Navy in the grade of captain.

(4) 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 or assignment to or designation in an officer category in which advanced education or training or special experience is required.

(c) 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.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on the active-duty list of the Army, Navy, Air Force, or Marine Corps in grades below lieutenant commander or major is critically below the number needed by that armed force in those grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment with a view to assignment to the Judge Advocate General's Corps of the Army or appointment to the Judge Advocate General's Corps of the Navy, or who is 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 amount credited such person under subsection (b)) as will result in the grade of such person being that

of captain or, in the case 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 the active-duty list.

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

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

(f) The grade and position on the reserve active-status list of a person receiving an appointment as a reserve officer who at the time of appointment is credited with service under this section shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added § 596b and renumbered § 12207, Pub. L. 103-337, div. A, title XVI, §§ 1634, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990; amended Pub. L. 109-163, div. A, title V, § 515(b)(1)(LL), Jan. 6, 2006, 119 Stat. 3234; Pub. L. 110-181, div. A, title V, § 512, Jan. 28, 2008, 122 Stat. 98; Pub. L. 115-91, div. A, title V, § 512(a), Dec. 12, 2017, 131 Stat. 1376; Pub. L. 115-232, div. A, title V, § 502(b), Aug. 13, 2018, 132 Stat. 1739; Pub. L. 116-283, div. A, title V, § 502(b), Jan. 1, 2021, 134 Stat. 3564.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3353, 5600, and 8353 of this title, prior to repeal by Pub. L. 103-337, § 1629(a)(1), (c)(1) and Pub. L. 104-106, § 1501(c)(26).

AMENDMENTS

2021—Subsec. (b)(1). Pub. L. 116-283, § 502(b)(1), substituted “and who has special training or experience, or advanced education (if applicable),” for “or a designation in, or an assignment to, an officer category in which advanced education or training is required and who has advanced education or training,” in introductory provisions. Amendment was executed to reflect the probable intent of Congress due to omission of words “by striking” in directory language.

Subsec. (b)(1)(D). Pub. L. 116-283, § 502(b)(2), added subpar. (D) and struck out former subpar. (D) which read as follows: “Additional credit for special training or experience in a particular officer career field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned.”

2018—Subsec. (b)(1)(D). Pub. L. 115-232, § 502(b)(1)(A), added subpar. (D) and struck out former subpar. (D) which read as follows: “Additional credit, in unusual cases, based on special experience in a particular field.”

Subsec. (b)(3). Pub. L. 115-232, § 502(b)(1)(B), added par. (3) and struck out former par. (3) which read as follows: “Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of officers covered by paragraph (2), 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 as a reserve officer of the Army, Air Force, or Marine Corps in the grade of major or as a reserve officer of the Navy in the grade of lieutenant commander.”

Subsecs. (e) to (g). Pub. L. 115-232, § 502(b)(2), redesignated subsecs. (f) and (g) as (e) and (f), respectively, substituted “or (d)” for “(d), or (e)” in introductory provisions of subsec. (e), and struck out former subsec. (e) which related to constructive service credited to commissioned officers with cyberspace-related experience or advanced education in reserve active-status.

2017—Subsec. (a)(2). Pub. L. 115-91, § 512(a)(1), inserted “or (e)” after “subsection (b)”.

Subsec. (e). Pub. L. 115-91, § 512(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 115-91, § 512(a)(2), (4), redesignated subsec. (e) as (f) and substituted “(d), or (e)” for “or (d)”. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 115-91, § 512(a)(2), redesignated subsec. (f) as (g).

2008—Subsec. (b)(2). Pub. L. 110-181, § 512(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “If the Secretary of Defense determines that the number of medical or dental officers serving in an active status in a reserve component of the Army, Navy, or Air Force in grades below major or lieutenant commander is critically below the number needed by such reserve component in such grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment for service as a medical or dental officer with a period of constructive credit in such amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Navy Reserve, lieutenant.”

Subsec. (b)(3). Pub. L. 110-181, § 512(b), substituted “officers covered by paragraph (2)” for “a medical or dental officer”.

2006—Subsec. (b)(2). Pub. L. 109-163 substituted “Navy Reserve” for “Naval Reserve”.

1994—Pub. L. 103-337, § 1662(c)(2), renumbered section 596b of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

ANNUAL REPORT

For provisions requiring submission to Congress of reports on the use of the authorities in subsec. (b)(1)(D) of this section, see section 502(c) of Pub. L. 116-283, set out as a note under section 533 of this title.

§ 12208. Officers: appointment upon transfer

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. 3801 et seq.), is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. 3801 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, § 595; Pub. L. 96-513, title V, § 511(17), Dec. 12, 1980, 94 Stat.