

itable under the 1938 Act must be creditable under 50 U.S.C. 1052. The words “active service in the armed forces, other than active duty for training” cover all creditable service. The Judge Advocate General of the Navy, in an opinion dated August 27, 1954 (JAG II:2:WGA:CA:mk), held that active duty for training was not creditable under the 1938 Act and is, therefore, not creditable under the 1952 Act.

AMENDMENTS

2006—Pub. L. 109-163, §515(b)(3)(B), substituted “Navy Reserve” for “Naval Reserve” in section catchline.

Subsecs. (a), (c). Pub. L. 109-163, §515(b)(1)(D), substituted “Navy Reserve” for “Naval Reserve”.

1963—Subsec. (b). Pub. L. 88-132 substituted “of the grade in which retired” for “to which he would be entitled if on active duty” after “50 percent of the basic pay”.

1958—Subsec. (e). Pub. L. 85-583 entitled eligible members of Naval Reserve or Marine Corps Reserve to elect to transfer to Fleet Reserve or Fleet Marine Corps Reserve.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6328. Computation of years of service: voluntary retirement

(a) ENLISTED MEMBERS.—Time required to be made up under section 972(a) of this title after February 10, 1996, may not be counted in computing years of service under this chapter.

(b) OFFICERS.—Section 972(b) of this title excludes from computation of an officer’s years of service for purposes of this chapter any time identified with respect to that officer under that section.

(c) TIME SPENT IN SEAMAN TO ADMIRAL PROGRAM.—The months of active service in pursuit of a baccalaureate-level degree under the Seaman to Admiral (STA-21) program of the Navy of officer candidates selected for the program on or after October 28, 2009, shall be excluded in computing the years of service of an officer who was appointed to the grade of ensign in the Navy upon completion of the program to determine the eligibility of the officer for retirement, unless the officer becomes subject to involuntary separation or retirement due to physical disability. Such active service shall be counted in computing the years of active service of the officer for all other purposes.

(Added Pub. L. 104-106, div. A, title V, §561(d)(3)(A), Feb. 10, 1996, 110 Stat. 322; amended Pub. L. 107-107, div. A, title X, §1048(c)(13), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 111-84, div. A, title V, §505, Oct. 28, 2009, 123 Stat. 2277; Pub. L. 113-291, div. A, title X, §1071(e)(5), Dec. 19, 2014, 128 Stat. 3510.)

PRIOR PROVISIONS

A prior section 6328, acts Aug. 10, 1956, ch. 1041, 70A Stat. 396; Sept. 24, 1983, Pub. L. 98-94, title IX, §923(c)(2), 97 Stat. 643, related to treatment of fractions of years of service in computing retired pay, prior to repeal by Pub. L. 99-348, title II, §203(b)(5), July 1, 1986, 100 Stat. 696.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113-291 substituted “on or after October 28, 2009,” for “on or after the date of the

enactment of the National Defense Authorization Act for Fiscal Year 2010”.

2009—Subsec. (c). Pub. L. 111-84 added subsec. (c).

2001—Subsec. (a). Pub. L. 107-107 substituted “February 10, 1996,” for “the date of the enactment of this section”.

EFFECTIVE DATE

Section effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104-106, set out as an Effective Date of 1996 Amendment note under section 972 of this title.

§ 6329. Officers not to be retired for misconduct

No officer of the Navy or the Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6329	34 U.S.C. 385. 34 U.S.C. 626-1(a) (1st sentence).	R.S. 1456. Aug. 7, 1947, ch. 512, §314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, §205, 68 Stat. 68.

The words “for which trial by court-martial would be appropriate” are substituted for the words “but he shall be brought to trial by court-martial for such misconduct”. The peremptory command in the source text is at variance with the theory of the Uniform Code of Military Justice and conflicts with the provisions of articles 30, 32, and 34. The substituted words are in accord with the interpretation placed on R.S. 1456 in *Denby v. Berry*, 263 U.S. 29, 36 (Nov. 12, 1923).

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under this section.

(b) An enlisted member of the Regular Navy or the Navy Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay computed under section 6333 of this title.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(d)(1) For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and