

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.<br>34 U.S.C. 626-1(a) (1st sentence). | R.S. 1456.<br>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

any remaining fractional part of a month is disregarded.

(2) In determining a member's eligibility for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)—

(A) a completed minority enlistment of the member is counted as four years of active service, if creditable to the member for such purpose before December 31, 1977; and

(B) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term, if creditable to the member for such purpose before December 31, 1977.

(3)(A) Subject to subparagraph (B), in determining a member's years of active service for the computation of retainer pay under subsection (c)—

(i) a completed minority enlistment of the member is counted as four years of active service; and

(ii) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term.

(B) In the case of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section after December 30, 1977, service attributable under subparagraph (A) to time which, after December 31, 1977, is not actually served by the member may not be counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396; Pub. L. 85-583, §1(2), (3), Aug. 1, 1958, 72 Stat. 480; Pub. L. 90-207, §3(4), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96-342, title VIII, §813(d)(5), Sept. 8, 1980, 94 Stat. 1105; Pub. L. 96-513, title V, §513(17), (19), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 98-94, title IX, §923(c)(3), Sept. 24, 1983, 97 Stat. 643; Pub. L. 99-348, title II, §203(b)(6), title III, §305(a)(1), July 1, 1986, 100 Stat. 696, 704; Pub. L. 101-189, div. A, title VI, §652(a)(5), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 109-163, div. A, title V, §515(b)(1)(J), Jan. 6, 2006, 119 Stat. 3233.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code)  | Source (Statutes at Large)   |
|-----------------|---|--|
| 6330 .....      | 34 U.S.C. 854 (less proviso).   | June 25, 1938, ch. 690, §201 (less proviso), 52 Stat. 1178.  |
|                 | 34 U.S.C. 854 (note).   | July 9, 1952, ch. 608, §803 (2d sentence of 1st par.), 66 Stat. 505.   |
|                 | 34 U.S.C. 854c (less 4th, 5th, 6th (as applicable to 34 U.S.C. 854b) and 7th provisos). | June 25, 1938, ch. 690, §204 (less 4th, 5th, 6th (as applicable to §203 of the Naval Reserve Act of 1938), and 7th provisos), 52 Stat. 1170; Aug. 10, 1946, ch. 952, §2, 60 Stat. 993. |
|                 | 34 U.S.C. 854a (less provisos).   | June 25, 1938, ch. 690, §202 (less provisos), 52 Stat. 1178.   |

In subsection (a) the words "officers" and "assigned" are omitted, since they are applicable only to the proviso in 34 U.S.C. 854, which is recommended for repeal as obsolete. (See Table 2A.) The words "including (a) those former members of the Fleet Reserve who were transferred \* \* \* but before the expiration of three months following discharge", appearing in §803 of the Armed Forces Reserve Act of 1952, 66 Stat. 505 (34 U.S.C. 854 (note)) are omitted as surplusage. These words merely illustrate the class of persons transferred to the

Fleet Reserve under the Naval Reserve Act of 1938, 52 Stat. 1178, as referred to in the section from which these words were taken, and in no way limit that class or impose a citizenship requirement for membership in it. (See the opinion of the Judge Advocate General of the Navy, JAG:II:1:JFG:imz of February 17, 1953.)

In subsection (b) reference to the date July 1, 1925, is omitted, since members who were in the naval service on or before that date may, if they are qualified and so elect, be transferred to the Fleet Reserve or to the Fleet Marine Corps Reserve under 34 U.S.C. 854c instead of under 34 U.S.C. 854b, as provided in the fifth proviso of 34 U.S.C. 854c. That proviso and the provisions of 34 U.S.C. 854b, which are applicable only to persons who were in the naval service in 1925, are not codified because they relate to a small closed class and are therefore of limited interest. They are not repealed, however. (See Table 2D.)

In subsections (b) and (c) the term "active service in the armed forces" is substituted for the term "active Federal service" to execute the definition in the last sentence of 34 U.S.C. 854c.

In subsection (c) the words "is entitled, when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he received at the time of transfer" are substituted for the words "except when on active duty, shall be paid at the annual rate of 2½ per centum of the annual base and longevity pay they are receiving at the time of transfer" to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.).

Subsection (d) states the rule as to the method of counting minority and short-term enlistments, in connection with determining active service, in accordance with *White v. United States*, 97 F. Supp. 698.

AMENDMENTS

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

1989—Subsec. (a). Pub. L. 101-189 substituted "under this section." for "under—

"(1) Title II of the Naval Reserve Act of 1938 (52 Stat. 1178), as amended; or

"(2) this section."

1986—Subsec. (c)(1). Pub. L. 99-348, §203(b)(6)(A), substituted provision that retainer pay be computed under section 6333 for provision that retainer pay, in the case of a member who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay that he received at the time of transfer or, in the case of a member who served as master chief petty officer of the Navy or sergeant major of the Marine Corps, of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer, or in the case of a member who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retainer pay base computed under section 1407(d), which rates were to be multiplied by the number of years of active service in the armed forces.

Subsec. (c)(4). Pub. L. 99-348, §203(b)(6)(B), struck out par. (4) which provided that in no case could a member's retainer pay be more than 75 percent of the basic pay or monthly retainer pay base upon which computation of retainer pay was based.

Subsec. (d). Pub. L. 99-348, §305(a)(1), designated existing provisions as par. (1), struck out provision that a completed minority enlistment be counted as four years of active service and an enlistment terminated within three months before the end of the term be counted as active service for the full term, and added pars. (2) and (3).

1983—Subsec. (d). Pub. L. 98-94 substituted "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 any remaining fractional part of a month is disregarded" for "For the purposes of subsections (b)

and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded”.

1980—Subsec. (c). Pub. L. 96-513 substituted “September 8, 1980” for “the date of the enactment of the Department of Defense Authorization Act, 1981” wherever appearing, and “master chief petty officer” for “senior enlisted advisor”.

Pub. L. 96-342 amended subsec. (c) generally, designating existing provisions as pars. (1) to (4) and, as so amended, in par. (1) designated existing provisions as subpar. (A), as so designated, inserted provision limiting applicability to persons who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B), in par. (2) inserted reference to section 1402a of this title, and in par. (4) added applicability to monthly retainer pay base.

1967—Subsec. (c). Pub. L. 90-207 inserted “, except that in the case of a member who has served as senior enlisted advisor of the Navy or sergeant major of the Marine Corps, retainer pay shall be computed on the basis of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer” after “armed forces”.

1958—Subsec. (a). Pub. L. 85-583, §1(2), substituted “naval service” for “Regular Navy and the Regular Marine Corps, respectively.”

Subsec. (b). Pub. L. 85-583, §1(3), inserted “or the Naval Reserve” after “Regular Navy” and “or the Marine Corps Reserve” after “Regular Marine Corps”.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-207 effective Oct. 1, 1967, see section 7 of Pub. L. 90-207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

#### TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Navy, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting “15 or more years” for “20 or more years” in the first sentence of subsection (a) [probably should be (b)] of this section and in the second sentence of subsec. (b) of this section, see section 4403 of Pub. L. 102-484, set out as a note under section 1293 of this title.

#### RETAINER PAY OF ENLISTED MEMBERS OF REGULAR NAVY, NAVAL RESERVE, REGULAR MARINE CORPS, OR MARINE CORPS RESERVE TRANSFERRED TO FLEET RESERVE OR FLEET MARINE CORPS RESERVE

Pub. L. 98-473, title I, §101(h) [title VIII, §8039], Oct. 12, 1984, 98 Stat. 1904, 1930, limited the use of assets of the Department of Defense Military Retirement Fund to pay the retainer pay of enlisted members of the Regular Navy, the Naval Reserve, the Regular Marine Corps, or the Marine Corps Reserve who were transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section on or after Dec. 31, 1977, prior to repeal by Pub. L. 99-348, title III, §305(a)(2),

July 1, 1986, 100 Stat. 704. See section 6330(d)(2) and (3) of this title.

#### TRANSFER OF FORMER MEMBERS OF NAVY OR MARINE CORPS TO FLEET RESERVE OR FLEET MARINE CORPS RESERVE; TRANSFER TO RETIRED LIST

Act July 24, 1956, ch. 683, 70 Stat. 626, provided: “Upon application by any former member of the Navy or Marine Corps—

“(1) who was discharged prior to August 10, 1946, under honorable conditions, and

“(2) who, at the time of his discharge, had at least twenty years’ active Federal service,

the Secretary of the Navy shall appoint such former member in the Fleet Reserve or Fleet Marine Corps Reserve, as may be appropriate, in the rank held by him at the time of such discharge.

“SEC. 2. Each person appointed to the Fleet Reserve or Fleet Marine Corps Reserve under the first section of this Act shall be transferred to the appropriate retired list (1) on the first day of the first calendar month beginning after such appointment, if his last discharge occurred ten or more years prior to the date of such appointment, and (2) in the case of individuals appointed under such section before the expiration of ten years from their last discharge, on the first day of the first calendar month, beginning after the expiration of ten years from the date of such discharge.

“SEC. 3. Each former member transferred to a retired list under clauses (1) and (2) of section 2 shall receive retired pay at the annual rate of 2½ per centum of the annual base and longevity pay he was receiving at the time of his last discharge, multiplied by the number of his years of active Federal service at such time (not to exceed thirty), and adjusted to reflect the percentage increases made since such discharge in the retired pay of persons retired from the Armed Forces prior to October 12, 1949.

“SEC. 4. For the purposes of this Act, all active service in the Army of the United States, the Navy, the Marine Corps, the Coast Guard, or any component thereof, shall be deemed to be active Federal service.

“SEC. 5. No pay shall accrue to the benefit of any person appointed under the provisions of this Act prior to the date such person is actually appointed under the provisions of this Act and in no event prior to the first day of the first month following enactment of this Act [July 24, 1956].”

#### § 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay

(a) When he has completed 30 years of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred—

(1) to the retired list of the Regular Navy or the Regular Marine Corps, as appropriate, if he was a member of the Regular Navy or the Regular Marine Corps at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve; or

(2) to the appropriate Retired Reserve, if he was a member of the Navy Reserve or the Marine Corps Reserve at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) For the purpose of subsection (a), a member’s years of service are computed by adding—

(1) the years of service credited to him upon his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve;

(2) his years of active and inactive service in the armed forces before his transfer to the