

son who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be computed by multiplying the monthly retired pay base computed under section 1407(d) by 75 percent.

1980—Subsec. (c)(2). 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 designated existing provisions as subpar. (A), 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).

1967—Subsec. (c)(2). Pub. L. 90-207 inserted “, or if he has served as senior enlisted advisor of the Navy or as sergeant major of the Marine Corps, he shall be entitled to retired pay at the rate of 75 percent of the highest basic pay to which he was entitled while so serving, if that rate is higher” after “retirement”.

1963—Subsec. (c)(2). Pub. L. 88-132 substituted “of” for “to which he would be entitled is serving on active duty in” after “75 percent of the basic pay”.

1958—Subsec. (c)(2). Pub. L. 85-422 substituted “pay grade in which he was serving on the day before retirement” for “grade in which retired”.

Subsec. (d). Pub. L. 85-861 repealed subsec. (d) which related to grade of members serving in a grade to which they were appointed under section 5597 or promoted under section 5787 of this title.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF 2018 AMENDMENT**

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 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.

**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.

**EFFECTIVE DATE OF 1958 AMENDMENT**

Amendment by Pub. L. 85-422 inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see section 6 of Pub. L. 85-422, set out in part under section 7361 of this title.

Amendment by Pub. L. 85-422 effective June 1, 1958, see section 9 of Pub. L. 85-422, May 20, 1958, 72 Stat. 130.

**§ 8327. Officers and enlisted members of the Navy Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay**

(a) A member of the Navy Reserve or the Marine Corps Reserve may be transferred to the Retired Reserve upon his request if he has completed—

- (1) at least 30 years of active service in the armed forces, other than active duty for training; or
- (2) at least 20 years of active service in the armed forces other than active duty for train-

ing, the last 10 of which he served in the 11-year period immediately preceding his transfer to the Retired Reserve.

(b) Each member who is transferred to the Retired Reserve under subsection (a) is entitled, when not on active duty, to retired pay at the rate of 50 percent of the basic pay of the grade in which retired.

(c) This section applies only to persons who were members of the Navy Reserve or the Marine Corps Reserve on January 1, 1953.

(d) This section terminates on January 1, 1973. However, its termination will not affect any accrued rights to retired pay.

(e) A member who is eligible for retirement under this section, and who is also eligible for retirement under another provision or for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under section 8330 of this title, is entitled to elect which of these benefits he is to receive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395, §6327; Pub. L. 85-583, §1(1), Aug. 1, 1958, 72 Stat. 480; Pub. L. 88-132, §5(h)(5), Oct. 2, 1963, 77 Stat. 214; Pub. L. 109-163, div. A, title V, §515(b)(1)(I), (3)(B), Jan. 6, 2006, 119 Stat. 3233, 3234; renumbered §8327 and amended Pub. L. 115-232, div. A, title VIII, §§807(b)(15), 809(a), Aug. 13, 2018, 132 Stat. 1836, 1840.)

**HISTORICAL AND REVISION NOTES**

| <i>Revised section</i> | <i>Source (U.S. Code)</i>              | <i>Source (Statutes at Large)</i>                                 |
|------------------------|--|---|
| 6327 .....             | 50 U.S.C. 1052(a), (b), (d), (e), (f). | July 9, 1952, ch. 608, §413(a), (b), (d), (e), (f), 66 Stat. 499. |

In subsection (a) the word “Federal” is omitted and the words “in the armed forces, other than active duty for training” are inserted. The words “active Federal service” are not defined in 50 U.S.C. 1052. Section 310 of the Naval Reserve Act of 1938, which 50 U.S.C. 1052 replaced, specifies active service in the “Army, Navy, Marine Corps, Coast Guard, Naval Auxiliary Service, Naval Reserve Force, Naval Militia in Federal status, National Naval Volunteers, Naval Reserve, Marine Corps Reserve Force, and Marine Corps Reserve.” 50 U.S.C. 1052 was intended to preserve the rights of persons who, on January 1, 1953, were members of reserve components, so that they would not be prejudiced by the repeal of §310 of the Naval Reserve Act of 1938 (U.S. Code Congressional and Administrative News, 1952, p. 3584). To effect that purpose, the service that was creditable 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.

**Editorial Notes**

**AMENDMENTS**

2018—Pub. L. 115-232, §807(b)(15), renumbered section 6327 of this title as this section.

Subsec. (e). Pub. L. 115-232, §809(a), substituted “section 8330” for “section 6330”.

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)(I), 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 enti-

bled 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.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

##### 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.

#### § 8328. 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, § 6328; 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; renumbered § 8328, Pub. L. 115-232, div. A, title VIII, § 807(b)(15), Aug. 13, 2018, 132 Stat. 1836.)

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 6328 of this title as this section.

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”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

##### 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.

#### § 8329. 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, § 6329; renumbered § 8329, Pub. L. 115-232, div. A, title VIII, § 807(b)(15), Aug. 13, 2018, 132 Stat. 1836.)

##### 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).

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 6329 of this title as this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

#### § 8330. 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.