

§ 3032. Service credit as deck officer or junior engineer for promotion purposes

For purposes of promotion, there shall be counted in addition to active commissioned service, service as deck officer or junior engineer.

(Pub. L. 107-372, title II, §232, Dec. 19, 2002, 116 Stat. 3088.)

Editorial Notes

CODIFICATION

Provisions similar to this section are contained in section 854a of this title.

§ 3033. Suspension during war or emergency

In time of emergency declared by the President or by the Congress, and in time of war, the President is authorized, in the President's discretion, to suspend the operation of all or any part of the provisions of law pertaining to promotion of commissioned officers of the Administration.

(Pub. L. 107-372, title II, §233, Dec. 19, 2002, 116 Stat. 3088.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853i(b) of this title prior to repeal by Pub. L. 107-372.

§ 3034. Officer candidates

(a) Determination of number

The Secretary shall determine the number of appointments of officer candidates.

(b) Appointment

Appointment of officer candidates shall be made under regulations, which the Secretary shall prescribe, including regulations with respect to determining age limits, methods of selection of officer candidates, term of service as an officer candidate before graduation from the basic officer training program of the Administration, and all other matters affecting such appointment.

(c) Dismissal

The Secretary may dismiss from the basic officer training program of the Administration any officer candidate who, during the officer candidate's term as an officer candidate, the Secretary considers unsatisfactory in either academics or conduct, or not adapted for a career in the commissioned officer corps of the Administration. Officer candidates shall be subject to rules governing discipline prescribed by the Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.

(d) Agreement

(1) In general

Each officer candidate shall sign an agreement with the Secretary in accordance with section 3006(a)(2) of this title regarding the officer candidate's term of service in the commissioned officer corps of the Administration.

(2) Elements

An agreement signed by an officer candidate under paragraph (1) shall provide that the officer candidate agrees to the following:

(A) That the officer candidate will complete the course of instruction at the basic officer training program of the Administration.

(B) That upon graduation from such program, the officer candidate—

(i) will accept an appointment, if tendered, as an officer; and

(ii) will serve on active duty for at least four years immediately after such appointment.

(e) Regulations

The Secretary shall prescribe regulations to carry out this section. Such regulations shall include—

(1) standards for determining what constitutes a breach of an agreement signed under subsection (d)(1); and

(2) procedures for determining whether such a breach has occurred.

(f) Repayment

An officer candidate or former officer candidate who does not fulfill the terms of the obligation to serve as specified under subsection (d) shall be subject to the repayment provisions of section 3006(b) of this title.

(Pub. L. 107-372, title II, §234, as added Pub. L. 116-259, title III, §305(a), Dec. 23, 2020, 134 Stat. 1172.)

§ 3035. Procurement of personnel

The Secretary may take such measures as the Secretary determines necessary in order to obtain recruits for the commissioned officer corps of the Administration, including advertising.

(Pub. L. 107-372, title II, §235, as added Pub. L. 116-259, title III, §306(a), Dec. 23, 2020, 134 Stat. 1174.)

§ 3036. Career flexibility to enhance retention of officers

(a) Programs authorized

The Secretary may carry out a program under which officers may be inactivated from active duty in order to meet personal or professional needs and returned to active duty at the end of such period of inactivation from active duty.

(b) Period of inactivation from active duty; effect of inactivation

(1) In general

The period of inactivation from active duty under a program under this section of an officer participating in the program shall be such period as the Secretary shall specify in the agreement of the officer under subsection (c), except that such period may not exceed three years.

(2) Exclusion from retirement

Any period of participation of an officer in a program under this section shall not count toward eligibility for retirement or computation of retired pay under subchapter III.

(c) Agreement

Each officer who participates in a program under this section shall enter into a written agreement with the Secretary under which that officer shall agree as follows:

(1) To undergo during the period of the inactivation of the officer from active duty under the program such inactive duty training as the Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps shall require in order to ensure that the officer retains proficiency, at a level determined by the Director to be sufficient, in the technical skills, professional qualifications, and physical readiness of the officer during the inactivation of the officer from active duty.

(2) Following completion of the period of the inactivation of the officer from active duty under the program, to serve two months on active duty for each month of the period of the inactivation of the officer from active duty under the program.

(d) Conditions of release

The Secretary shall—

(1) prescribe regulations specifying the guidelines regarding the conditions of release that must be considered and addressed in the agreement required by subsection (c); and

(2) at a minimum, prescribe the procedures and standards to be used to instruct an officer on the obligations to be assumed by the officer under paragraph (1) of such subsection while the officer is released from active duty.

(e) Order to active duty

Under regulations prescribed by the Secretary, an officer participating in a program under this section may, in the discretion of the Secretary, be required to terminate participation in the program and be ordered to active duty.

(f) Pay and allowances**(1) Basic pay**

During each month of participation in a program under this section, an officer who participates in the program shall be paid basic pay in an amount equal to two-thirtieths of the amount of monthly basic pay to which the officer would otherwise be entitled under section 204 of title 37 as a member of the uniformed services on active duty in the grade and years of service of the officer when the officer commences participation in the program.

(2) Special or incentive pay or bonus**(A) Prohibition**

An officer who participates in a program under this section shall not, while participating in the program, be paid any special or incentive pay or bonus to which the officer is otherwise entitled under an agreement under chapter 5 of title 37 that is in force when the officer commences participation in the program.

(B) Not treated as failure to perform services

The inactivation from active duty of an officer participating in a program under this section shall not be treated as a failure of the officer to perform any period of service

required of the officer in connection with an agreement for a special or incentive pay or bonus under chapter 5 of title 37 that is in force when the officer commences participation in the program.

(3) Return to active duty**(A) Special or incentive pay or bonus**

Subject to subparagraph (B), upon the return of an officer to active duty after completion by the officer of participation in a program under this section—

(i) any agreement entered into by the officer under chapter 5 of title 37 for the payment of a special or incentive pay or bonus that was in force when the officer commenced participation in the program shall be revived, with the term of such agreement after revival being the period of the agreement remaining to run when the officer commenced participation in the program; and

(ii) any special or incentive pay or bonus shall be payable to the officer in accordance with the terms of the agreement concerned for the term specified in clause (i).

(B) Limitation**(i) In general**

Subparagraph (A) shall not apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to an officer if, at the time of the return of the officer to active duty as described in that subparagraph—

(I) such pay or bonus is no longer authorized by law; or

(II) the officer does not satisfy eligibility criteria for such pay or bonus as in effect at the time of the return of the officer to active duty.

(ii) Pay or bonus ceases being authorized

Subparagraph (A) shall cease to apply to any special or incentive pay or bonus otherwise covered by that subparagraph with respect to an officer if, during the term of the revived agreement of the officer under subparagraph (A)(i), such pay or bonus ceases being authorized by law.

(C) Repayment

An officer who is ineligible for payment of a special or incentive pay or bonus otherwise covered by this paragraph by reason of subparagraph (B)(i)(II) shall be subject to the requirements for repayment of such pay or bonus in accordance with the terms of the applicable agreement of the officer under chapter 5 of title 37.

(D) Required service is additional

Any service required of an officer under an agreement covered by this paragraph after the officer returns to active duty as described in subparagraph (A) shall be in addition to any service required of the officer under an agreement under subsection (c).

(4) Travel and transportation allowance**(A) In general**

Subject to subparagraph (B), an officer who participates in a program under this

section is entitled, while participating in the program, to the travel and transportation allowances authorized by section 452 of title 37 for—

(i) travel performed from the residence of the officer, at the time of release from active duty to participate in the program, to the location in the United States designated by the officer as the officer's residence during the period of participation in the program; and

(ii) travel performed to the residence of the officer upon return to active duty at the end of the participation of the officer in the program.

(B) Single residence

An allowance is payable under this paragraph only with respect to travel of an officer to and from a single residence.

(5) Leave balance

An officer who participates in a program under this section is entitled to carry forward the leave balance existing as of the day on which the officer begins participation and accumulated in accordance with section 701 of title 10, but not to exceed 60 days.

(g) Promotion

(1) In general

An officer participating in a program under this section shall not, while participating in the program, be eligible for consideration for promotion under this subchapter.

(2) Return to service

Upon the return of an officer to active duty after completion by the officer of participation in a program under this section—

(A) the Secretary may adjust the date of rank of the officer in such manner as the Secretary shall prescribe in regulations for purposes of this section; and

(B) the officer shall be eligible for consideration for promotion when officers of the same competitive category, grade, and seniority are eligible for consideration for promotion.

(h) Continued entitlements

An officer participating in a program under this section shall, while participating in the program, be treated as a member of the uniformed services on active duty for a period of more than 30 days for purposes of—

(1) the entitlement of the officer and of the dependents of the officer to medical and dental care under the provisions of chapter 55 of title 10, ; and

(2) retirement or separation for physical disability under the provisions of subchapter III.

(Pub. L. 107-372, title II, §236, as added Pub. L. 116-259, title III, §307(a), Dec. 23, 2020, 134 Stat. 1174; Pub. L. 117-263, div. A, title VI, §626(f), Dec. 23, 2022, 136 Stat. 2629.)

Editorial Notes

AMENDMENTS

2022—Subsec. (f)(4)(A). Pub. L. 117-263 substituted “section 452” for “section 474”.

SUBCHAPTER III—SEPARATION AND RETIREMENT OF OFFICERS

§ 3041. Involuntary retirement or separation

(a) Transfer of officers to retired list; separation from service

As recommended by a personnel board convened under section 3022 of this title—

(1) an officer in the permanent grade of captain or commander may—

(A) except as provided by subparagraph (B), be transferred to the retired list; or

(B) if the officer is not qualified for retirement, be separated from service; and

(2) an officer in the permanent grade of lieutenant commander, lieutenant, or lieutenant (junior grade) who is not qualified for retirement may be separated from the service.

(b) Computations

In any fiscal year, the total number of officers selected for retirement or separation under subsection (a) plus the number of officers retired for age may not exceed the whole number nearest 4 percent of the total number of officers authorized to be on the active list, except as otherwise provided by law.

(c) Effective date of retirements and separations

A retirement or separation under subsection (a) shall take effect on the first day of the sixth month beginning after the date on which the Secretary approves the retirement or separation, except that if the officer concerned requests an earlier retirement or separation date, the date shall be as determined by the Secretary.

(d) Deferment of retirement or separation for medical reasons

(1) In general

If the Secretary determines that the evaluation of the medical condition of an officer requires hospitalization or medical observation that cannot be completed with confidence in a manner consistent with the officer's well-being before the date on which the officer would otherwise be required to retire or be separated under this section, the Secretary may defer the retirement or separation of the officer.

(2) Consent required

A deferment may only be made with the written consent of the officer involved. If the officer does not provide written consent to the deferment, the officer shall be retired or separated as scheduled.

(3) Limitation

A deferment of retirement or separation under this subsection may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.

(Pub. L. 107-372, title II, §241, Dec. 19, 2002, 116 Stat. 3088; Pub. L. 116-259, title IV, §401, Dec. 23, 2020, 134 Stat. 1177; Pub. L. 117-263, div. K, title CXVII, §11705(a), Dec. 23, 2022, 136 Stat. 4157.)