

**Calendar No. 292**

113TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
113-133 }

NATIONAL OCEANIC AND ATMOSPHERIC AD-  
MINISTRATION COMMISSIONED OFFICER  
CORPS AMENDMENTS ACT OF 2013

---

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1068



JANUARY 8, 2014.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

39-010

WASHINGTON : 2014

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JOHN D. ROCKEFELLER IV, West Virginia, *Chairman*

BARBARA BOXER, California	JOHN THUNE, South Dakota
BILL NELSON, Florida	ROGER F. WICKER, Mississippi
MARIA CANTWELL, Washington	ROY BLUNT, Missouri
MARK PRYOR, Arkansas	MARCO RUBIO, Florida
CLAIRE McCASKILL, Missouri	KELLY AYOTTE, New Hampshire
AMY KLOBUCHAR, Minnesota	DEAN HELLER, Nevada
MARK WARNER, Virginia	DANIEL COATS, Indiana
MARK BEGICH, Alaska	TIM SCOTT, South Carolina
RICHARD BLUMENTHAL, Connecticut	TED CRUZ, Texas
BRIAN SCHATZ, Hawaii	DEB FISCHER, Nebraska
ED MARKEY, New Mexico	RON JOHNSON, Wisconsin
CORY BOOKER, Massachusetts	

ELLEN DONESKI, *Staff Director*

JOHN WILLIAMS, *General Counsel*

DAVID SCHWIETERT, *Republican Staff Director*

NICK ROSSI, *Republican Deputy Staff Director*

REBECCA SEIDEL, *Republican General Counsel*

## Calendar No. 292

113TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
113-133

### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS AMENDMENTS ACT OF 2013

---

JANUARY 8, 2014.—Ordered to be printed

---

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 1068]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1068) to reauthorize and amend the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 1068 is to reauthorize and amend the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (Act of 2002) and make a number of improvements, clarifications, and refinements to the statutory authorities of the National Oceanic and Atmospheric Administration (NOAA).

#### BACKGROUND AND NEEDS

The National Oceanic and Atmospheric Administration Commissioned Officer Corps (NOAA Corps) is one of the seven uniformed services of the United States. Five of these uniformed services are the armed forces of the Army, Navy, Air Force, Marines, and Coast Guard, and the remaining two are the commissioned corps of NOAA and the commission corps of the U.S. Public Health Service (USPHS). The approximately 320 officers of the NOAA Corps make up approximately 3 percent of NOAA's personnel. Officers can be found operating one of NOAA's ships or aircraft to provide support

to meet NOAA's missions, and additionally facilitate research projects, conduct diving operations, and serve in staff positions throughout the agency. Duties and areas of operations can range from launching a weather balloon at the South Pole, conducting hydrographic or fishery surveys in Alaska, maintaining buoys in the tropical Pacific, and flying survey aircraft into hurricanes to provide accurate weather forecasts. During times of war or national emergency, NOAA Corps officers can assume positions of leadership and command in the Armed Forces.

The NOAA Corps traces its roots back to the former Survey of the Coast, established in 1807 by President Thomas Jefferson. The NOAA Corps today provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines. Like other uniformed services, NOAA Corps officers spend much of their careers away from family and friends, serving aboard NOAA ships and aircraft which frequently deploy up to eight or nine months a year.

This bill is intended to update and better align NOAA Corps' obligations, human resource requirements, and benefits with those of officers in the other uniformed services. There is no overall spending increase in the bill, however. The creation of an "Officer Candidate" rank, which includes lower pay during training, is expected to generate modest savings. Any spending on new programs authorized by the legislation is intended to be capped at the amount of savings generated by the forecasted decrease in allocated "Officer Candidate" pay.

#### SUMMARY OF PROVISIONS

S. 1068 would update the NOAA Corps' tools and authorities needed to successfully carry out its missions, particularly to develop and sustain robust applicant pools to improve recruiting of minority candidates. These authorities are needed to improve diversity in the NOAA Corps and allow for retention of highly-skilled female NOAA Corps officers. Other uniformed services and the private sector have many incentive programs used to entice minority students with a science or engineering background, making it more difficult for the NOAA Corps to compete for those candidates. This bill would give the NOAA Corps the tools and authorities to recruit and to compete for these candidates, including: a pre-commissioning educational assistance program for students who agree to serve in the NOAA Corps; an education loan repayment program for students with critical technical skills; and an education loan interest repayment program for officers in the first three years of active duty. This bill also would authorize a sabbatical program to allow officers to leave the service (and receive no pay or benefits) for a few years for personal reasons such as starting a family.

This bill also tightens the requirements expected of officers. For instance, the bill would authorize NOAA to bind NOAA Corps officers by contract or obligation, and require stricter physical fitness requirements. The bill also would allow NOAA to defer service termination and retirements if needed to support the agency's service needs. This bill streamlines procedures for appointment and promotion of junior officers and more closely aligns the NOAA Corps with other uniformed services, thereby improving the Service's ability to carry out NOAA's missions. Finally, this bill would create a

new “Officer Candidate” rank for officers entering duty for a period of initial training, require officers to meet U. S. Coast Guard physical fitness standards, and add the authority to require a period of obligated service after initial training.

#### LEGISLATIVE HISTORY

Senator Begich introduced S. 1068 on May 23, 2013, with Senators Schatz and Wicker joining as original cosponsors of the bill. Senators Blumenthal, Cantwell, Cochran, Merkley, Mikulski, and Nelson are also non-original cosponsors of the legislation. A similar bill, The NOAA Corps Amendments Act of 2012, passed the Senate by unanimous consent in the 112th Congress (S. 2388).

On July 30, 2013, the Committee met in open executive session and, by voice vote, ordered S. 1068 reported with one accepted amendment: Senator Begich offered an amendment to update three clerical references. The amendment would delete the words “and promotions generally” in the table of contents, to comport with the new section title proposed by the bill. Further, the amendment would make changes to reflect updated renumbering of the title regarding Pay and Allowances of the Uniformed Services (37 U.S.C. 101 et seq.). Specifically, the references in section 406 of the bill relating to recruiting expenses should be to section 488 of title 37, United States Code, and references relating to funeral honors duty should be to section 495 of title 37, United States Code.

The Committee, without objection, ordered S. 1068 be reported favorably, as amended, by an amendment in the nature of a substitute.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

##### *S. 1068—National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2013*

S. 1068 would modify certain personnel policies for the commissioned officer corps of the National Oceanic and Atmospheric Administration (NOAA). Based on information provided by NOAA, CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting the legislation could affect offsetting receipts (a credit against direct spending) from payments made by individuals who enter the corps but fail to complete their required service obligations as well as revenues from fines levied on individuals who wear the uniform of the NOAA commissioned officer corps without proper authorization. Therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant.

The bill would establish service requirements for individuals enlisting in the NOAA commissioned officer corps. Under the bill, any officer who fails to meet those requirements would be obligated to repay NOAA an amount equal to the costs incurred to train that officer. Based on information provided by NOAA regarding the cost of such training, CBO estimates that the total amount of payments

to NOAA from officers who fail to meet their service obligations would be minimal.

S. 1068 also would make it illegal for any individual to wear the uniform of the NOAA commissioned officer corps without proper authorization. Violators would be subject to criminal penalties; however, CBO estimates that any amounts collected would be minimal and would be offset by associated direct spending.

In addition, the legislation would authorize NOAA to spend appropriated funds to recruit corps members. In 2013, the agency did not allocate any appropriated funds for such activities. On average, the corps admits about 30 new members each year. Based on information regarding the costs of recruiting for other uniformed services, CBO estimates that implementing this provision would cost less than \$300,000 a year, assuming the availability of appropriated funds.

Finally, the bill would authorize NOAA to pay certain expenses related to higher education for individuals serving in the commissioned officer corps or individuals who commit to serving in the corps after completing a college degree. Based on information provided by the agency about the number of officers who would receive such assistance, CBO estimates that implementing this provision would cost less than \$200,000 a year, assuming the availability of appropriated funds.

The bill would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would increase the costs of complying with existing mandates by increasing the number of personnel in the NOAA commissioned officer corps who are eligible for protections under the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Protections under those acts require public and private entities to grant active-duty personnel various allowances relative to business and tax transactions and court procedures. The bill would impose an additional intergovernmental mandate by preempting state and local laws relating to jury exemptions.

Because the increase in the number of active-duty servicemembers covered by SCRA and USERRA would be so small, CBO expects that the incremental cost of compliance also would be small. Therefore, CBO estimates that the aggregate cost of the mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$75 million and \$150 million in 2013, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Jeff LaFave (for federal costs), J'neil L. Blanco (for the intergovernmental impact), and Amy Petz (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

## NUMBER OF PERSONS COVERED

The bill would modify certain personnel policies for the approximately 320 officers of the NOAA Corps. It would not increase or decrease the number of individuals regulated.

## ECONOMIC IMPACT

The bill does not include new authorization of funds, and is not expected to have an adverse impact on the Nation's economy. It is anticipated that enacting the legislation could have a modest positive effect through the authorization of fine collection and receipt of payments.

## PRIVACY

The bill would not have any adverse impact on the personal privacy of individuals.

## PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens resulting from the passage of this legislation. Section 502 of the Act would require the development of a report to Congress.

## CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; table of contents.*

This section would provide that the Act be cited as the "National Oceanic and Atmospheric Administration Commissioned Officer Corps Amendments Act of 2013".

**TITLE I—GENERAL PROVISIONS**

*Section 101. Strength and distribution in grade.*

This section would formally establish the commissioned grades of the NOAA Corps that have historically existed. It also would limit the distribution of officers in senior ranks, and allow the Secretary of Commerce (Secretary) flexibility to establish distribution in grades for junior ranks. This establishes the same distribution in grade as the Navy.

*Section 102. Exclusion of officers recalled from retired status and positions of importance and responsibility from number of authorized commission officers.*

This section would allow NOAA Corps officers temporarily recalled from retirement and 3 Flag Officers to not be counted against the NOAA Corps' statutorily authorized operational strength. The NOAA Corps currently cannot recall officers from retired status to assist in disaster response, a limitation that con-

strained NOAA's response to the Deepwater Horizon oil blowout and ongoing spill in 2010.

*Section 103. Obligated service requirement.*

This section would provide legislative authority to bind NOAA Corps officers by contract or obligation. The NOAA Corps currently does not have any legislative authority to bind officers to service by contract or obligation. Theoretically, an officer could receive training (costs up to \$100,000, depending on type of training) and resign from the NOAA Corps shortly thereafter. The other uniformed services require an obligated service for appointment, training, promotion, etc. of officers to ensure they receive an adequate return on investment in these categories.

*Section 104. Training and physical fitness.*

This section would amend subtitle A of title II of the Act of 2002 (33 U.S.C. 3001 et seq.) and give the Secretary the authority to conduct officer training and correspondence courses, including establishing and operating a basic officer training program to provide initial indoctrination and maritime vocational training for officer candidates as well as refresher training, mid-career training, aviation training, and such other training as the Secretary considers necessary for officer development and proficiency. This section would require the Secretary to ensure that officers maintain a high physical state of readiness in preparation for functioning, to meet the standards of the Coast Guard. NOAA Corps officers now serve alongside Coast Guard officers in joint Officer Candidate School classes, and therefore NOAA Corps officers must meet the standards of physical fitness for officers that are substantially equivalent to those prescribed for officers in the Coast Guard. Officers who do not meet body composition or physical fitness standards over a certain period can be administratively separated (i.e., fired).

## **TITLE II—APPOINTMENTS AND PROMOTION OF OFFICERS**

*Section 201. Appointments.*

This section would amend section 221 of the Act of 2002 (33 U.S.C. 3021) to give the NOAA Corps the authority to bestow an original appointment of an officer to be appropriate for the qualification, experience, and length of service of the appointee to meet current NOAA Corps science education standards. This section would give the NOAA Corps the same authority as other uniformed services to commission junior officers, without seeking advice and consent of the U.S. Senate. This section would also allow officers to be re-appointed to the grade they left the NOAA Corps. The current statute limits original appointments to the grades of ensign, lieutenant (junior grade), and lieutenant. The NOAA Corps would like to implement a new retention tool to allow officers to temporarily separate and pursue personal goals or other opportunities outside the Service, while providing a mechanism for their return to active duty. This section would allow that policy to be implemented, and would be expected to assist the NOAA Corps in retaining senior female officers.



*Section 202. Personnel boards.*

This section would amend section 222 of the Act of 2002 (33 U.S.C. 3022) and allow retired, recalled officers as well as more junior officers to serve on personnel boards. The current law does not allow retired or active officers below the pay grade of commander to serve on personnel boards, and makes it very difficult to form personnel boards, due to the Corps' inherent small size. This section would allow officers to serve on personnel boards if they are above the permanent grade of the officer(s) under consideration by the board and allow retired officers to be voluntarily recalled to serve on personnel boards, when necessary.

*Section 203. Delegation of authority for appointments and promotions to permanent grades.*

This section would require the President to also make delegations to the Deputy Secretary or NOAA Administrator for periods when there is no Secretary. Corps promotions and appointments have been made difficult during periods when there has been no Secretary to sign said appointments or promotions.

*Section 204. Temporary appointments.*

This section would amend section 229 of the Act of 2002 (33 U.S.C. 3029) and allow the NOAA Corps to appoint junior officers without seeking the Senate's advice and consent, reducing both executive branch and Senatorial workloads.

*Section 205. Officer candidates.*

Currently, officers entering the NOAA Corps for initial training are directly commissioned as officers on their first day. All other services have a period when the individual is an "Officer Candidate" before receiving a commission. This section would amend subtitle B of title II of the Act of 2002 (33 U.S.C. 3021 et seq.) and give NOAA the authority to create an "Officer Candidate" rank, with reduced pay. This would result in savings of approximately \$115,000 annually, which could be used to pay for officer precommissioning and education programs established elsewhere in this bill.

*Section 206. Procurement of personnel.*

This section would authorize the NOAA Corps to engage in recruiting activities, similar to statutory provisions applicable to the Coast Guard.

### **TITLE III—SEPARATION AND RETIREMENT OF OFFICERS**

*Section 301. Involuntary retirement or separation.*

This section would give the NOAA Corps authority to defer an officer's involuntary retirement or separation due to medical conditions or the Service's needs across all ranks. Currently NOAA can defer involuntary separation of Lieutenant Commanders and below, but it cannot for Commanders and Captains.

*Section 302. Separation pay.*

This section would remove a loophole in existing law that allows those voluntarily leaving the Service to manipulate the system to get separation. Separation pay is normally used to compensate a member who is being forced out due to non-selection by a promotion board. Under current law, officers who wanted to leave the service could theoretically seek to not be promoted, be separated due to non-promotion, and yet still receive separation pay to accompany their basically voluntary resignation.

## **TITLE IV—RIGHTS AND BENEFITS**

*Section 401. Education loan repayment program.*

This section would also amend subtitle E of title II of the Act of 2002 (33 U.S.C. 3071 et seq.) to allow the NOAA Corps the authority to repay education loans. The NOAA Corps does not have the same education loan repayment recruiting incentives as the other uniformed services. Without these authorities, the NOAA Corps has trouble recruiting highly qualified students with the science and engineering degrees the NOAA Corps requires.

*Section 402. Interest payment program.*

This section would amend subtitle E of title II of the Act of 2002 (33 U.S.C. 3071 et seq.) such that the Secretary may pay the interest on student loans of eligible officers. The NOAA Corps does not have the same authority for the repayment of interests on education loans as the other uniformed services. The Department of Defense and the Coast Guard offer the interest payment program as a recruiting incentive. This section would provide the statutory authority for the repayment of interest payments on educational loans for up to 36 months while the officer is serving. This section is intended to help the NOAA Corps compete for highly qualified students.

*Section 403. Student pre-commissioning education assistance program.*

This section would amend subtitle E of title II of the Act of 2002 (33 U.S.C. 3071 et seq.) to establish a student pre-commissioning education assistance program. The NOAA Corps does not have the same authority for student pre-commissioning assistance program as the other uniformed services. For example, the Coast Guard offers a student pre-commissioning assistance program as a recruiting incentive for students at primarily minority-serving institutions. This would again help the NOAA Corps compete for highly qualified students.

*Section 404. Limitation on educational assistance.*

This section would limit the total amount expended by the Secretary for educational assistance programs for NOAA Corps officers. Specifically, expenditures under sections 401, 402, and 403 of the Act would be limited to savings due to the creation of an “Officer Candidate” rank (under section 205 of the Act).

*Section 405. Applicability of certain provisions of title 10, United States Code.*

This section and several of those that follow would make minor amendments to section 261(a) of the Act of 2002 (33 U.S.C. 3071(a)), which outlines the rules of law that apply to the Armed Forces as extended to the NOAA Corps. First, current law does not allow a NOAA Corps officer to administer the oath of enlistment or appointment to a son, daughter, or other relative or friend who may be appointed as an officer or enlisting in one of the other Services. Second, the NOAA Corps does not have the legislative authority for correction of errors or removal of injustices from current and former NOAA Corps officers' records. Third, this section would provide the authority used by the other uniformed services to exempt personnel from service on State and local juries when such service would interfere unreasonably with performance of an officer's uniformed service duties.

*Section 406. Applicability of certain provisions of title 37, United States Code.*

This section would amend subtitle E of title II of the Act of 2002 (33 U.S.C. 3071 et seq.) and provide authority for accession bonuses for new officers with critical skills, allowing the NOAA Corps to compete for applicants, as well as miscellaneous authorities for pay (for funeral duty, recruiting expenses, etc.) that other uniformed services have.

*Section 407. Applicability of certain provisions of competitive service law.*

This section would amend section 3304(f) of title 5, United States Code, and ensure that officers of the NOAA Corps and USPHS are considered Federal employees when applying for jobs only open to Federal employees. Currently, they are not.

*Section 408. Eligibility of all members of uniformed services for legion of merit award.*

This section would amend section 1121 of title 10, United States Code, and allow the officers of the NOAA Corps and USPHS to receive the Legion of Merit Award.

*Section 409. Application of Employment and Reemployment Rights of Members of the Uniformed Services to members of commissioned officer corps.*

This section would amend section 4303(16) of title 38, United States Code, and extend the Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibition against employment discrimination against uniformed service members to the NOAA Corps.

*Section 410. Protected communications for commissioned officer corps and prohibition of retaliatory personnel actions.*

Currently, the NOAA Corps and USPHS officers fall between the cracks in whistleblower protection. Neither the regulations that protect military members nor the regulations that protect civil servants protect them. This section would ensure that the whistle-

blower protections under section 1034 of title 10, United States Code, also cover members of the NOAA Corps.

*Section 411. Criminal penalties for wearing uniform without authority.*

This section would extend military regulations governing the wearing of uniform without authority to NOAA Corps officers.

## TITLE V—OTHER MATTERS

*Section 501. Technical correction.*

This section would make a minor grammatical technical correction to section 101(21)(C) of title 38, United States Code.

*Sections 502 and 503. Report and effective date.*

Section 502 of the Act would require a report, not later than 90 days after the enactment of this Act, on the current and future needs of the NOAA Corps, as well as identification of areas of duplication or redundancy before the changes in the bill go into effect under section 503 of the Act.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in *roman*):

### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COMMISSIONED OFFICER CORPS ACT OF 2002

[33 U.S.C. 3001 et seq.]

#### SEC. 212. DEFINITIONS.

[33 U.S.C. 3002]

(a) **APPLICABILITY OF DEFINITIONS IN TITLE 10, UNITED STATES CODE.**—Except as provided in subsection (b), the definitions provided in section 101 of title 10, United States Code, apply to the provisions of this title.

(b) **ADDITIONAL DEFINITIONS.**—In this title:

(1) **ACTIVE DUTY.**—The term “active duty” means full-time duty in the active service of a uniformed service.

(2) **GRADE.**—The term “grade” means a step or degree, in a graduated scale of office or rank, that is established and designated as a grade by law or regulation.

(3) **OFFICER.**—The term “officer” means an officer of the commissioned corps.

(4) **OFFICER CANDIDATE.**—*The term “officer candidate” means an individual who is enrolled in the basic officer training program of the Administration and is under consideration for appointment as an officer under section 221(a)(2)(A).*

[(4)] (5) **FLAG OFFICER.**—The term “flag officer” means an officer serving in, or having the grade of, vice admiral, rear admiral, or rear admiral (lower half).

[(5)] (6) **SECRETARY.**—The term “Secretary” means the Secretary of Commerce.

[(6)] (7) ADMINISTRATION.—The term “Administration” means the National Oceanic and Atmospheric Administration.

**[SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.]**

[33 U.S.C. 3004]

[(a) RELATIVE RANK; PROPORTION.—Of the total authorized number of officers on the lineal list of the commissioned corps, there are authorized numbers in permanent grade, in relative rank with officers of the Navy, in proportions as follows:

- [(1) 8 in the grade of captain.
- [(2) 14 in the grade of commander.
- [(3) 19 in the grade of lieutenant commander.
- [(4) 23 in the grade of lieutenant.
- [(5) 18 in the grade of lieutenant (junior grade).
- [(6) 18 in the grade of ensign.

[(b) COMPUTATION OF NUMBER IN GRADE.—

[(1) IN GENERAL.—Subject to paragraph (2), whenever a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken, and if the fraction is one-half the next higher whole number shall be taken.

[(2) LIMITATION ON INCREASE IN TOTAL NUMBER.—The total number of officers on the lineal list authorized by law may not be increased as the result of the computations prescribed in this section, and if necessary the number of officers in the lowest grade shall be reduced accordingly.

[(c) PRESERVATION OF GRADE AND PAY, ETC.—No officer may be reduced in grade or pay or separated from the commissioned corps as the result of a computation made to determine the authorized number of officers in the various grades.

[(d) FILLING OF VACANCIES; ADDITIONAL NUMBERS.—Nothing in this section may be construed as requiring the filling of any vacancy or as prohibiting additional numbers in any grade to compensate for vacancies existing in higher grades.

[(e) TEMPORARY INCREASE IN NUMBERS.—The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded so long as the average number on that list during that fiscal year does not exceed the authorized number.]

**SEC. 214. STRENGTH AND DISTRIBUTION IN GRADE.**

(a) GRADES.—*The commissioned grades in the commissioned officer corps of the Administration are the following, in relative rank with officers of the Navy:*

- (1) *Vice admiral.*
- (2) *Rear admiral.*
- (3) *Rear admiral (lower half).*
- (4) *Captain.*
- (5) *Commander.*
- (6) *Lieutenant commander.*
- (7) *Lieutenant.*
- (8) *Lieutenant (junior grade).*
- (9) *Ensign.*

(b) PROPORTION.—

(1) IN GENERAL.—*The officers on the lineal list shall be distributed in grade in the following percentages:*

(A) 8 in the grade of captain.

(B) 14 in the grade of commander.

(C) 19 in the grade of lieutenant commander.

(2) *GRADES BELOW LIEUTENANT COMMANDER.*—The Secretary shall prescribe, with respect to the distribution on the lineal list in grade, the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign.

(c) *ANNUAL COMPUTATION OF NUMBER IN GRADE.*—

(1) *IN GENERAL.*—Not less frequently than once each year, the Secretary shall make a computation to determine the number of officers on the lineal list authorized to be serving in each grade.

(2) *METHOD OF COMPUTATION.*—The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made.

(3) *FRACTIONS.*—If a final fraction occurs in computing the authorized number of officers in a grade, the nearest whole number shall be taken. If the fraction is  $\frac{1}{2}$ , the next higher whole number shall be taken.

(d) *TEMPORARY INCREASE IN NUMBERS.*—The total number of officers authorized by law to be on the lineal list during a fiscal year may be temporarily exceeded if the average number on that list during that fiscal year does not exceed the authorized number.

(e) *POSITIONS OF IMPORTANCE AND RESPONSIBILITY.*—Officers serving in positions designated under section 228(a) and officers recalled from retired status shall not be counted when computing authorized strengths under subsection (c) and shall not count against those strengths.

(f) *PRESERVATION OF GRADE AND PAY.*—No officer may be reduced in grade or pay or separated from the commissioned officer corps of the Administration as the result of a computation made to determine the authorized number of officers in the various grades.

#### **SEC. 215. NUMBER OF AUTHORIZED COMMISSIONED OFFICERS.**

[33 U.S.C. 3005]

**[Effective]** (a) *IN GENERAL.*—Effective October 1, 2009, the total number of authorized commissioned officers on the lineal list of the commissioned corps of the National Oceanic and Atmospheric Administration shall be increased from 321 to 379 if—

(1) the Secretary has submitted to the Congress—

(A) the Administration's ship recapitalization plan for fiscal years 2010 through 2024;

(B) the Administration's aircraft modernization plan;

and

(C) supporting workforce management plans;

(2) appropriated funding is available; and

(3) the Secretary has justified organizational needs for the commissioned corps for each such fiscal year.

(b) *POSITIONS OF IMPORTANCE AND RESPONSIBILITY.*—Officers serving in positions designated under section 228 and officers recalled from retired status—

(1) may not be counted in determining the total number of authorized officers on the lineal list under this section; and

(2) may not count against such number.

**SEC. 216. OBLIGATED SERVICE REQUIREMENT.****(a) IN GENERAL.—**

(1) **RULEMAKING.**—*The Secretary shall prescribe the obligated service requirements for appointments, training, promotions, separations, continuations, and retirement of officers not otherwise covered by law.*

(2) **WRITTEN AGREEMENTS.**—*The Secretary and officers shall enter into written agreements that describe the officers' obligated service requirements prescribed under paragraph (1) in return for such appointments, training, promotions, separations, and retirements as the Secretary considers appropriate.*

**(b) REPAYMENT FOR FAILURE TO SATISFY REQUIREMENTS.—**

(1) **IN GENERAL.**—*The Secretary may require an officer who fails to meet the service requirements prescribed under subsection (a)(1) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the training provided to that officer by the Secretary as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve.*

(2) **OBLIGATION AS DEBT TO UNITED STATES.**—*An obligation to reimburse the Secretary under paragraph (1) shall be considered for all purposes as a debt owed to the United States.*

(3) **DISCHARGE IN BANKRUPTCY.**—*A discharge in bankruptcy under title 11 that is entered less than 5 years after the termination of a written agreement entered into under subsection (a)(2) does not discharge the individual signing the agreement from a debt arising under such agreement.*

**(c) WAIVER OR SUSPENSION OF COMPLIANCE.—***The Secretary may waive the service obligation of an officer who—*

(1) *becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that officer; or*

(2) *is—*

(A) *not physically qualified for appointment; and*

(B) *determined to be unqualified for service in the commissioned officer corps of the Administration because of a physical or medical condition that was not the result of the officer's own misconduct or grossly negligent conduct.*

**SEC. 217. TRAINING AND PHYSICAL FITNESS.**

(a) **TRAINING.**—*The Secretary may take such measures as may be necessary to ensure that officers are prepared to carry out their duties in the commissioned officer corps of the Administration and proficient in the skills necessary to carry out such duties. Such measures may include the following:*

(1) *Carrying out training programs and correspondence courses, including establishing and operating a basic officer training program to provide initial indoctrination and maritime vocational training for officer candidates as well as refresher training, mid-career training, aviation training, and such other training as the Secretary considers necessary for officer development and proficiency.*

(2) *Providing officers and officer candidates with books and school supplies.*

(3) *Acquiring such equipment as may be necessary for training and instructional purposes.*

(b) *PHYSICAL FITNESS.*—*The Secretary shall ensure that officers maintain a high physical state of readiness by establishing standards of physical fitness for officers that are substantially equivalent to those prescribed for officers in the Coast Guard.*

**[SEC. 221. ORIGINAL APPOINTMENTS.**

[33 U.S.C. 3021]

**[(a) IN GENERAL.—**

**[(1) GRADES.—**Original appointments may be made in the grades of ensign, lieutenant (junior grade), and lieutenant.

**[(2) QUALIFICATIONS.—**Under regulations prescribed by the Secretary, such an appointment may be given only to a person who—

**[(A)** meets the qualification requirements specified in paragraphs (1) through (4) of section 532(a) of title 10, United States Code; and

**[(B)** has such other special qualifications as the Secretary may prescribe by regulation.

**[(3) EXAMINATION.—**A person may be given such an appointment only after passage of a mental and physical examination given in accordance with regulations prescribed by the Secretary.

**[(4) REVOCATION OF COMMISSION OF OFFICERS FOUND NOT QUALIFIED.—**President may revoke the commission of any officer appointed under this section during the officer's first three years of service if the officer is found not qualified for the service. Any such revocation shall be made under regulations prescribed by the President.

**[(b) LINEAL LIST.—**Each person appointed under this section shall be placed on the lineal list in a position commensurate with that person's age, education, and experience, in accordance with regulations prescribed by the Secretary.

**[(c) SERVICE CREDIT UPON ORIGINAL APPOINTMENT IN GRADE ABOVE ENSIGN.—**

**[(1) IN GENERAL.—**For the purposes of basic pay, a person appointed under this section in the grade of lieutenant shall be credited as having, on the date of that appointment, three years of service, and a person appointed under this section in the grade of lieutenant (junior grade) shall be credited as having, as of the date of that appointment, 1 1/2 years of service.

**[(2) HIGHER CREDIT UNDER OTHER LAW.—**If a person appointed under this section is entitled to credit for the purpose of basic pay under any other provision of law that would exceed the amount of credit authorized by paragraph (1), that person shall be credited with that amount of service in lieu of the credit authorized by paragraph (1).]

**SEC. 221. ORIGINAL APPOINTMENTS AND REAPPOINTMENTS.**

**(a) ORIGINAL APPOINTMENTS.—**

**(1) GRADES.—**

**(A) IN GENERAL.—***Except as provided in subparagraph (B), an original appointment of an officer may be made in such grades as may be appropriate for—*

*(i) the qualification, experience, and length of service of the appointee; and*



(ii) *the commissioned officer corps of the Administration.*

(B) *APPOINTMENT OF OFFICER CANDIDATES.—*

(i) *LIMITATION ON GRADE.—An original appointment of an officer candidate, upon graduation from the basic officer training program of the commissioned officer corps of the Administration, may not be made in any other grade than ensign.*

(ii) *RANK.—Officer candidates receiving appointments as ensigns upon graduation from basic officer training program shall take rank according to their proficiency as shown by the order of their merit at date of graduation.*

(2) *SOURCE OF APPOINTMENTS.—An original appointment may be made from among the following:*

(A) *Graduates of the basic officer training program of the commissioned officer corps of the Administration.*

(B) *Graduates of the military service academies of the United States who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).*

(C) *Licensed officers of the United States merchant marine who have served 2 or more years aboard a vessel of the United States in the capacity of a licensed officer, who otherwise meet the academic standards for enrollment in the training program described in subparagraph (A).*

(3) *MILITARY SERVICE ACADEMIES OF THE UNITED STATES DEFINED.—In this subsection, the term ‘military service academies of the United States’ means the following:*

(A) *The United States Military Academy, West Point, New York.*

(B) *The United States Naval Academy, Annapolis, Maryland.*

(C) *The United States Air Force Academy, Colorado Springs, Colorado.*

(D) *The United States Coast Guard Academy, New London, Connecticut.*

(E) *The United States Merchant Marine Academy, Kings Point, New York.*

(b) *REAPPOINTMENT.—*

(1) *IN GENERAL.—Except as provided in paragraph (2), an individual who previously served in the commissioned officer corps of the Administration may be appointed by the Secretary to the grade the individual held prior to separation.*

(2) *REAPPOINTMENTS TO HIGHER GRADES.—An appointment under paragraph (1) to a position of importance and responsibility designated under section 228 may only be made by the President.*

(c) *QUALIFICATIONS.—An appointment under subsection (a) or (b) may not be given to an individual until the individual’s mental, moral, physical, and professional fitness to perform the duties of an officer has been established under such regulations as the Secretary shall prescribe.*

(d) *PRECEDENCE OF APPOINTEES.—Appointees under this section shall take precedence in the grade to which appointed in accordance*

*with the dates of their commissions as commissioned officers in such grade. Appointees whose dates of commission are the same shall take precedence with each other as the Secretary shall determine.*

*(e) INTER-SERVICE TRANSFERS.—For inter-service transfers (as described in the Department of Defense Directive 1300.4 (dated December 27, 2006)) the Secretary shall—*

*(1) coordinate with the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating to promote and streamline inter-service transfers;*

*(2) give preference to such inter-service transfers for recruitment purposes as determined appropriate by the Secretary; and*

*(3) reappoint such inter-service transfers to the equivalent grade in the commissioned officer corps.*

#### **[SEC. 222. PERSONNEL BOARDS.**

[33 U.S.C. 3022]

**[(a) CONVENING.—**At least once a year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board. A personnel board shall consist of not less than five officers on the lineal list in the permanent grade of commander or above.

**[(b) DUTIES.—**Each personnel board shall—

**[(1)** recommend to the Secretary such changes in the lineal list as the board may determine; and

**[(2)** make selections and recommendations to the Secretary and President for the appointment, promotion, separation, continuation, and retirement of officers as prescribed in this subtitle and subtitle C.

**[(c) ACTION ON RECOMMENDATIONS NOT ACCEPTABLE.—**In a case in which any recommendation by a board convened under subsection (a) is not accepted by the Secretary or the President, the board shall make such further recommendations as are acceptable.]

#### **SEC. 222. PERSONNEL BOARDS.**

*(a) CONVENING.—Not less frequently than once each year and at such other times as the Secretary determines necessary, the Secretary shall convene a personnel board.*

*(b) MEMBERSHIP.—*

*(1) IN GENERAL.—A board convened under subsection (a) shall consist of 5 or more officers who are serving in or above the permanent grade of the officers under consideration by the board.*

*(2) RETIRED OFFICERS.—Officers on the retired list may be recalled to serve on such personnel boards as the Secretary considers necessary.*

*(3) NO MEMBERSHIP ON 2 SUCCESSIVE BOARDS.—No officer may be a member of 2 successive personnel boards convened to consider officers of the same grade for promotion or separation.*

*(c) DUTIES.—Each personnel board shall—*

*(1) recommend to the Secretary such changes as may be necessary to correct any erroneous position on the lineal list that was caused by administrative error; and*

*(2) make selections and recommendations to the Secretary and the President for the appointment, promotion, involuntary*

*separation, continuation, and involuntary retirement of officers in the commissioned officer corps of the Administration as prescribed in this title.*

*(d) ACTION ON RECOMMENDATIONS NOT ACCEPTABLE.—If any recommendation by a board convened under subsection (a) is not accepted by the Secretary or the President, the board shall make such further recommendations as the Secretary or the President consider appropriate.*

**SEC. 226. APPOINTMENTS AND PROMOTIONS TO PERMANENT GRADES.**

[33 U.S.C. 3026]

**[Appointments]** *(a) IN GENERAL.—Appointments in and promotions to all permanent grades shall be made by the President.*

*(b) DELEGATION OF APPOINTMENT AUTHORITY.—If the President delegates authority to the Secretary to make appointments under this section, the President shall, during a period in which the position of the Secretary is vacant, delegate such authority to the Deputy Secretary of Commerce or the Under Secretary for Oceans and Atmosphere during such period.*

**[SEC. 229. TEMPORARY APPOINTMENTS AND PROMOTIONS GENERALLY.**

[33 U.S.C. 3029]

**[(a) ENSIGN.—**Temporary appointments in the grade of ensign may be made by the President. Each such temporary appointment terminates at the close of the next regular session of the Congress.

**[(b) LIEUTENANT (JUNIOR GRADE).—**Officers in the permanent grade of ensign may be temporarily promoted to and appointed in the grade of lieutenant (junior grade) by the President whenever vacancies exist in higher grades.

**[(c) ANY ONE GRADE.—**When determined by the Secretary to be in the best interest of the service, officers in any permanent grade may be temporarily promoted one grade by the President. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.]

**SEC. 229. TEMPORARY APPOINTMENTS.**

*(a) APPOINTMENTS BY PRESIDENT.—Temporary appointments in the grade of ensign, lieutenant junior grade, or lieutenant may be made by the President.*

*(b) TERMINATION.—A temporary appointment to a position under subsection (a) shall terminate upon approval of a permanent appointment for such position made by the President.*

*(c) ORDER OF PRECEDENCE.—Appointees under subsection (a) shall take precedence in the grade to which appointed in accordance with the dates of their appointments as officers in such grade. The order of precedence of appointees who are appointed on the same date shall be determined by the Secretary.*

*(d) ANY ONE GRADE.—When determined by the Secretary to be in the best interest of the commissioned officer corps, officers in any permanent grade may be temporarily promoted one grade by the President. Any such temporary promotion terminates upon the transfer of the officer to a new assignment.*

*(e) DELEGATION OF APPOINTMENT AUTHORITY.—If the President delegates authority to the Secretary to make appointments under this section, the President shall, during a period in which the posi-*

tion of the Secretary is vacant, delegate such authority to the Deputy Secretary of Commerce or the Under Secretary for Oceans and Atmosphere during such period.

**SEC. 234. 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 program, 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 216(a)(2) 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 the 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 4 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 such 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 section (d) shall be subject to the repayment provisions of section 216(b).

**SEC. 235. PROCUREMENT OF PERSONNEL.**

The Secretary may make such expenditures as the Secretary considers necessary in order to obtain recruits for the commissioned officer corps of the Administration, including advertising.

**SEC. 241. INVOLUNTARY RETIREMENT OR SEPARATION.**

[33 U.S.C. 3041]

(a) **TRANSFER OF OFFICERS TO RETIRED LIST; SEPARATION FROM SERVICE.**—As recommended by a personnel board convened under section 222—

(1) an officer in the permanent grade of captain or commander may be transferred to the retired list; 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 deferral 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.

**SEC. 242. SEPARATION PAY.**

[33 U.S.C. 3042]

(a) **AUTHORIZATION OF PAYMENT.**—An officer who is separated under section 241(a)(2) and who has completed more than three years of continuous active service immediately before that separation is entitled to separation pay computed under subsection (b) unless the Secretary determines that the conditions under which the officer is separated do not warrant payment of that pay.

(b) **AMOUNT OF SEPARATION PAY.**—

(1) **SIX OR MORE YEARS.**—In the case of an officer who has completed six or more years of continuous active service immediately before that separation, the amount of separation pay to be paid to the officer under this section is 10 percent of the product of—

(A) the years of active service creditable to the officer; and

(B) 12 times the monthly basic pay to which the officer was entitled at the time of separation.

(2) THREE TO SIX YEARS.—In the case of an officer who has completed three or more but fewer than six years of continuous active service immediately before that separation, the amount of separation pay to be paid to the officer under this section is one-half of the amount computed under paragraph (1).

(c) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—The provisions of subsections (f), (g), and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section in the same manner as such provisions apply to separation pay under that section.

(d) EXCEPTION.—*An officer discharged for twice failing selection for promotion to the next higher grade is not entitled to separation pay under this section if the officer—*

- (1) *expresses a desire not to be selected for promotion; or*
- (2) *requests removal from the list of selectees.*

**SEC. 261. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10, UNITED STATES CODE.**

[33 U.S.C. 3071]

(a) PROVISIONS MADE APPLICABLE TO THE CORPS.—The rules of law that apply to the Armed Forces under the following provisions of title 10, United States Code, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

- (1) Chapter 40, relating to leave.
- (2) Section 533(b), relating to constructive service.
- (3) Section 716, relating to transfers between the armed forces and to and from National Oceanic and Atmospheric Administration.
- (4) *Section 771, relating to unauthorized wearing of uniforms.*
- (5) *Section 774, relating to wearing religious apparel while in uniform.*
- (6) *Section 982, relating to service on State and local juries.*
- (7) *Section 1031, relating to administration of oaths.*
- (8) *Section 1034, relating to protected communications and prohibition of retaliatory personnel actions.*

[(4)](9) Section 1035, relating to deposits of savings.

[(5)](10) Section 1036, relating to transportation and travel allowances for escorts for dependents of members.

[(6)](11) Section 1052, relating to reimbursement for adoption expenses.

[(11)](12) *Chapter 58, relating to the Benefits and Services for members being separated or recently separated.*

[(7)](13) Section 1174a, relating to special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).

[(8)](14) Chapter 61, relating to retirement or separation for physical disability.

[(9)](15) Chapter 69, relating to retired grade, except sections 1370, 1375, and 1376.

[(10)](16) Chapter 71, relating to computation of retired pay.

~~[(11)]~~(17) Chapter 73, relating to annuities based on retired or retainer pay.

~~[(12)]~~(18) Subchapter II of chapter 75, relating to death benefits.

(19) *Subchapter I of chapter 88, relating to Military Family Programs.*

(20) *Section 2005, relating to advanced education assistance, active duty agreements, and reimbursement requirements.*

~~[(13)]~~(21) Section 2634, relating to transportation of motor vehicles for members on permanent change of station.

~~[(14)]~~(22) Sections 2731 and 2735, relating to property loss incident to service.

~~[(15)]~~(23) Section 2771, relating to final settlement of accounts of deceased members.

~~[(16)]~~(24) Such other provisions of subtitle A of that title as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

(b) REFERENCES.—The authority vested by title 10, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee.

**SEC. 261A. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 37, UNITED STATES CODE.**

(a) *PROVISIONS MADE APPLICABLE TO COMMISSIONED OFFICER CORPS.*—The provisions of law applicable to the Armed Forces under the following provisions of title 37, United States Code, shall apply to the commissioned officer corps of the Administration:

(1) *Section 324, relating to accession bonuses for new officers in critical skills.*

(2) *Section 403(f)(3), relating to prescribing regulations defining the terms “field duty” and “sea duty”.*

(3) *Section 403(l), relating to temporary continuation of housing allowance for dependents of members dying on active duty.*

(4) *Section 414(a)(2), relating to personal money allowance while serving as Director of the National Oceanic and Atmospheric Administration Commissioned Officer Corps.*

(5) *Section 488, relating to allowances for recruiting expenses.*

(6) *Section 495, relating to allowances for funeral honors duty.*

(b) REFERENCES.—The authority vested by title 37, United States Code, in the “military departments”, “the Secretary concerned”, or “the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee.

**SEC. 267. EDUCATION LOAN REPAYMENT PROGRAM.**

(a) *AUTHORITY TO REPAY EDUCATION LOANS.*—For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty who have skills required by the commissioned officer corps, the Secretary may repay, in the case of a person described in subsection (b), a loan that—

- (1) *was used by the person to finance education; and*
- (2) *was obtained from a governmental entity, private financial institution, educational institution, or other authorized entity.*

(b) **ELIGIBLE PERSONS.**—*To be eligible to obtain a loan repayment under this section, a person must—*

- (1) *satisfy 1 of the requirements specified in subsection (c);*
- (2) *be fully qualified for, or hold, an appointment as a commissioned officer in the commissioned officer corps of the Administration; and*
- (3) *sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.*

(c) **ACADEMIC AND PROFESSIONAL REQUIREMENTS.**—*One of the following academic requirements must be satisfied for purposes of determining the eligibility of an individual for a loan repayment under this section:*

- (1) *The person is fully qualified in a profession that the Secretary has determined to be necessary to meet identified skill shortages in the commissioned officer corps.*
- (2) *The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution (as determined by the Secretary of Education) leading to a degree in a profession that will meet identified skill shortages in the commissioned officer corps.*

(d) **LOAN REPAYMENTS.**—

(1) **IN GENERAL.**—*Subject to the limits established under paragraph (2), a loan repayment under this section may consist of the payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b).*

(2) **LIMITATION ON AMOUNT.**—*For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary may pay not more than the amount specified in section 2173(e)(2) of title 10, United States Code.*

(e) **ACTIVE DUTY SERVICE OBLIGATION.**—

(1) **IN GENERAL.**—*A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation.*

(2) **LENGTH OF OBLIGATION DETERMINED UNDER REGULATIONS.**—

(A) **IN GENERAL.**—*Except as provided in subparagraph (B), the length of the obligation under paragraph (1) shall be determined under regulations prescribed by the Secretary.*

(B) **MINIMUM OBLIGATION.**—*The regulations prescribed under subparagraph (A) may not provide for a period of obligation of less than 1 year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.*

(3) **PERSONS ON ACTIVE DUTY BEFORE ENTERING INTO AGREEMENT.**—*The active duty service obligation of persons on active duty before entering into the agreement shall be served after the conclusion of any other obligation incurred under the agreement.*



(f) *EFFECT OF FAILURE TO COMPLETE OBLIGATION.*—

(1) *ALTERNATIVE OBLIGATIONS.*—An officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given any alternative obligation, at the discretion of the Secretary.

(2) *REPAYMENT.*—An officer who does not complete the period of active duty specified in the agreement entered into under subsection (b)(3), or the alternative obligation imposed under paragraph (1), shall be subject to the repayment provisions under section 216.

(g) *RULEMAKING.*—The Secretary shall prescribe regulations to carry out this section, including—

(1) standards for qualified loans and authorized payees; and

(2) other terms and conditions for the making of loan repayments.

**SEC. 268. INTEREST PAYMENT PROGRAM.**

(a) *AUTHORITY.*—The Secretary may pay the interest and any special allowances that accrue on 1 or more student loans of an eligible officer, in accordance with this section.

(b) *ELIGIBLE OFFICERS.*—An officer is eligible for the benefit described in subsection (a) while the officer—

(1) is serving on active duty;

(2) has not completed more than 3 years of service on active duty;

(3) is the debtor on 1 or more unpaid loans described in subsection (c); and

(4) is not in default on any such loan.

(c) *STUDENT LOANS.*—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

(d) *MAXIMUM BENEFIT.*—Interest and any special allowance may be paid on behalf of an officer under this section for any of the 36 consecutive months during which the officer is eligible under subsection (b).

(e) *FUNDS FOR PAYMENTS.*—The Secretary may use amounts appropriated for the pay and allowances of personnel of the commissioned officer corps of the Administration for payments under this section.

(f) *COORDINATION WITH SECRETARY OF EDUCATION.*—

(1) *IN GENERAL.*—The Secretary shall consult with the Secretary of Education regarding the administration of this section.

(2) *TRANSFER OF FUNDS.*—The Secretary shall transfer to the Secretary of Education the funds necessary—

(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(o), 455(l), and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(o), 1087e(l), and 1087dd(j)); and

(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in

*coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.).*

(g) *SPECIAL ALLOWANCE DEFINED.*—*In this section, the term “special allowance” means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).*

**SEC. 269. STUDENT PRE-COMMISSIONING EDUCATION ASSISTANCE PROGRAM.**

(a) *AUTHORITY TO PROVIDE FINANCIAL ASSISTANCE.*—*For the purpose of maintaining adequate numbers of officers of the commissioned officer corps of the Administration on active duty, the Secretary may provide financial assistance to a person described in subsection (b) for expenses of the person while the person is pursuing on a full-time basis at an accredited educational institution (as determined by the Secretary of Education) a program of education approved by the Secretary that leads to—*

*(1) a baccalaureate degree in not more than 5 academic years;*

*or*

*(2) a postbaccalaureate degree.*

(b) *ELIGIBLE PERSONS.*—

*(1) IN GENERAL.*—*A person is eligible to obtain financial assistance under subsection (a) if the person—*

*(A) is enrolled on a full-time basis in a program of education referred to in subsection (a) at any educational institution described in such subsection;*

*(B) meets all of the requirements for acceptance into the commissioned officer corps of the Administration except for the completion of a baccalaureate degree; and*

*(C) enters into a written agreement with the Secretary described in paragraph (2).*

*(2) AGREEMENT.*—*A written agreement referred to in paragraph (1)(C) is an agreement between the person and the Secretary in which the person agrees—*

*(A) to accept an appointment as an officer, if tendered; and*

*(B) upon completion of the person’s educational program, agrees to serve on active duty, immediately after appointment, for—*

*(i) up to 3 years if the person received less than 3 years of assistance; and*

*(ii) up to 5 years if the person received at least 3 years of assistance.*

(c) *QUALIFYING EXPENSES.*—*Expenses for which financial assistance may be provided under subsection (a) are the following:*

*(1) Tuition and fees charged by the educational institution involved.*

*(2) The cost of books.*

*(3) In the case of a program of education leading to a baccalaureate degree, laboratory expenses.*

*(4) Such other expenses as the Secretary considers appropriate.*

(d) *LIMITATION ON AMOUNT.*—*The Secretary shall prescribe the amount of financial assistance provided to a person under sub-*

section (a), which may not exceed the amount specified in section 2173(e)(2) of title 10, United States Code, for each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(2).

(e) *DURATION OF ASSISTANCE.*—Financial assistance may be provided to a person under subsection (a) for not more than 5 consecutive academic years.

(f) *SUBSISTENCE ALLOWANCE.*—

(1) *IN GENERAL.*—A person who receives financial assistance under subsection (a) shall be entitled to a monthly subsistence allowance at a rate prescribed under paragraph (2) for the duration of the period for which the person receives such financial assistance.

(2) *DETERMINATION OF AMOUNT.*—The Secretary shall prescribe monthly rates for subsistence allowance provided under paragraph (1), which shall be equal to the amount specified in section 2144(a) of title 10, United States Code.

(g) *INITIAL CLOTHING ALLOWANCE.*—

(1) *TRAINING.*—The Secretary may prescribe a sum which shall be credited to each person who receives financial assistance under subsection (a) to cover the cost of the person's initial clothing and equipment issue.

(2) *APPOINTMENT.*—Upon completion of the program of education for which a person receives financial assistance under subsection (a) and acceptance of appointment in the commissioned officer corps of the Administration, the person may be issued a subsequent clothing allowance equivalent to that normally provided to a newly appointed officer.

(h) *TERMINATION OF FINANCIAL ASSISTANCE.*—

(1) *IN GENERAL.*—The Secretary shall terminate the assistance provided to a person under this section if—

(A) the Secretary accepts a request by the person to be released from an agreement described in subsection (b)(2);

(B) the misconduct of the person results in a failure to complete the period of active duty required under the agreement; or

(C) the person fails to fulfill any term or condition of the agreement.

(2) *REIMBURSEMENT.*—The Secretary may require a person who receives assistance described in subsection (c), (f), or (g) under an agreement entered into under subsection (b)(1)(C) to reimburse the Secretary in an amount that bears the same ratio to the total costs of the assistance provided to that person as the unserved portion of active duty bears to the total period of active duty the officer agreed to serve under the agreement.

(3) *WAIVER.*—The Secretary may waive the service obligation of a person through an agreement entered into under subsection (b)(1)(C) if the person—

(A) becomes unqualified to serve on active duty in the commissioned officer corps of the Administration because of a circumstance not within the control of that person; or

(B) is—

(i) not physically qualified for appointment; and

(ii) determined to be unqualified for service in the commissioned officer corps of the Administration be-

*cause of a physical or medical condition that was not the result of the person's own misconduct or grossly negligent conduct.*

(4) *OBLIGATION AS DEBT TO UNITED STATES.*—An obligation to reimburse the Secretary imposed under paragraph (2) is, for all purposes, a debt owed to the United States.

(5) *DISCHARGE IN BANKRUPTCY.*—A discharge in bankruptcy under title 11, United States Code, that is entered less than 5 years after the termination of a written agreement entered into under subsection (b)(1)(C) does not discharge the person signing the agreement from a debt arising under such agreement or under paragraph (2).

(i) *REGULATIONS.*—The Secretary may promulgate such regulations and orders as the Secretary considers appropriate to carry out this section.

## HIGHER EDUCATION ACT OF 1965

[79 Stat. 1219]

### SEC. 428. FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS.

[20 U.S.C. 1078]

\* \* \* \* \*

(o) **[ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—]** *ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS.*—

(1) *AUTHORITY.*—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, or section 264 of the *National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002* for the payment of interest and any special allowance on a loan to a member of the Armed Forces or an officer in the commissioned officer corps of the *National Oceanic and Atmospheric Administration*, respectively, that is made, insured, or guaranteed under this part, the Secretary shall pay the interest and special allowance on such loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest or any special allowance on such a loan out of any funds other than funds that have been so transferred.

(2) *FORBEARANCE.*—During the period in which the Secretary is making payments on a loan under paragraph (1), the lender shall grant the borrower forbearance in accordance with the guaranty agreement under subsection (c)(3)(A)(i)(IV).

(3) *SPECIAL ALLOWANCE DEFINED.*—For the purposes of this subsection, the term “special allowance” means a special allowance that is payable with respect to a loan under section 438.

### SEC. 455. TERMS AND CONDITIONS OF LOANS.

[20 U.S.C. 1087e]

\* \* \* \* \*

(1) **[ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—]** *ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS.*—

(1) *AUTHORITY.*—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, or

*section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 for the payment of interest on a loan made under this part to a member of the Armed Forces or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration, respectively, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.*

(2) **FORBEARANCE.**—During the period in which the Secretary is making payments on a loan under paragraph (1), the Secretary shall grant the borrower forbearance, in the form of a temporary cessation of all payments on the loan other than the payments of interest on the loan that are made under that paragraph.

\* \* \* \* \*

#### **SEC. 464. TERMS AND CONDITIONS OF LOANS.**

[20 U.S.C. 1087jj]

\* \* \* \* \*

(j) **[ARMED FORCES STUDENT LOAN INTEREST PAYMENT PROGRAM.—]** *ARMED FORCES AND NOAA COMMISSIONED OFFICER CORPS STUDENT LOAN INTEREST PAYMENT PROGRAMS.*—

(1) **AUTHORITY.**—Using funds received by transfer to the Secretary under section 2174 of title 10, United States Code, or *section 264 of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 for the payment of interest on a loan made under this part to a member of the Armed Forces or an officer in the commissioned officer corps of the National Oceanic and Atmospheric Administration, respectively, the Secretary shall pay the interest on the loan as due for a period not in excess of 36 consecutive months. The Secretary may not pay interest on such a loan out of any funds other than funds that have been so transferred.*

(2) **FORBEARANCE.**—During the period in which the Secretary is making payments on a loan under paragraph (1), the institution of higher education shall grant the borrower forbearance in accordance with subsection (e)(1)(C).

\* \* \* \* \*

#### **TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES**

#### **§ 3304. Competitive service; examinations**

\* \* \* \* \*

(f)

(1) Preference eligibles or veterans who have been separated from the armed forces *and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service* under honorable conditions after 3 years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from

individuals outside its own workforce under merit promotion procedures.

(2) If selected, a preference eligible **or veteran** , *veteran*, or *member* described in paragraph (1) shall receive a career or career-conditional appointment, as appropriate.

(3) This subsection shall not be construed to confer an entitlement to veterans' preference that is not otherwise required by law.

(4) The area of consideration for all merit promotion announcements which include consideration of individuals of the Federal workforce shall indicate that preference eligibles and veterans who have been separated from the armed forces *and members of the commissioned officer corps of the National Oceanic and Atmospheric Administration (or its predecessor organization the Coast and Geodetic Survey) separated from such uniformed service* under honorable conditions after 3 years or more of active service are eligible to apply. The announcements shall be publicized in accordance with section 3327.

(5) The Office of Personnel Management shall prescribe regulations necessary for the administration of this subsection. The regulations shall ensure that an individual who has completed an initial tour of active duty is not excluded from the application of this subsection because of having been released from such tour of duty shortly before completing 3 years of active service, having been honorably released from such duty.

#### TITLE 10. ARMED FORCES

##### CHAPTER 57. DECORATIONS AND AWARDS

#### § 1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the "Legion of Merit", having suitable appurtenances and devices and not more than four degrees, to any member of the **armed forces** *uniformed services* of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

#### TITLE 18. CRIMES AND CRIMINAL PROCEDURE

##### PART I. CRIMES

##### CHAPTER 33. EMBLEMS, INSIGNIA, AND NAMES

#### § 702. Uniform of armed forces and Public Health Service

Whoever, in any place within the jurisdiction of the United States or in the Canal Zone, without authority, wears the uniform or a distinctive part thereof or anything similar to a distinctive part of the uniform of any of the armed forces of the United States, Public Health **Service or any** *Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, or any auxiliary of such*, shall be fined under this title or imprisoned not more than six months, or both.

## TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

## CHAPTER 3. BASIC PAY

**§ 203. Rates**

(a)

(1) The rates of monthly basic pay for members of the uniformed services within each pay grade are those prescribed in accordance with section 1009 of this title or as otherwise prescribed by law.

(2) Notwithstanding the rates of basic pay in effect at any time as provided by law, the rates of basic pay payable for commissioned officers in pay grades O-7 through O-10 may not exceed the monthly equivalent of the rate of pay for level II of the Executive Schedule, and the rates of basic pay payable for all other officers and for enlisted members may not exceed the monthly equivalent of the rate of pay for level V of the Executive Schedule.

(b) While serving as a permanent professor at the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy or as a member of the permanent commissioned teaching staff at the United States Coast Guard Academy, an officer who has over 36 years of service computed under section 205 of this title is, in addition to the pay and allowances to which he is otherwise entitled under this title, entitled to additional pay in the amount of \$250 a month. This additional pay may not be used in the computation of retired pay.

(c) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or a midshipman at the United States Naval Academy, is entitled to monthly cadet pay, or midshipman pay, at the monthly rate equal to 35 percent of the basic pay of a commissioned officer in the pay grade O-1 with less than two years of service.

(d)

(1) The basic pay of a commissioned officer who is in pay grade O-1, O-2, or O-3 and who is credited with a total of over four years' service described in paragraph (2) shall be computed in the same manner as the basic pay of a commissioned officer in the same pay grade who has been credited with over four years' active service as an enlisted member.

(2) Service to be taken into account for purposes of computing basic pay under paragraph (1) is as follows:

(A) Active service as a warrant officer or as a warrant officer and an enlisted member.

(B) Service as a warrant officer, as an enlisted member, or as a warrant officer and an enlisted member, for which at least 1,460 points have been credited to the officer for the purposes of section 12732(a)(2) of title 10.

(e)

(1) A student at the United States Military Academy Preparatory School, the United States Naval Academy Preparatory School, or the United States Air Force Academy Preparatory School who was selected to attend the preparatory school from civilian life is entitled to monthly student pay at

the same rate as provided for cadets and midshipmen under subsection (c).

(2) A student at a preparatory school referred to in paragraph (1) who, at the time of the student's selection to attend the preparatory school, was an enlisted member of the uniformed services shall receive monthly basic pay at the rate prescribed for the student's pay grade and years of service as an enlisted member or at the rate provided for cadets and midshipmen under subsection (c), whichever is greater.

(3) The monthly student pay of a student described in paragraph (1) shall be treated for purposes of the accrual charge for the Department of Defense Military Retirement Fund established under section 1461 of title 10 in the same manner as monthly cadet pay or midshipman pay under subsection (c).

*(f)(1) An officer candidate enrolled in the basic officer training program of the commissioned officer corps of the National Oceanic and Atmospheric Administration is entitled, while participating in such program, to monthly officer candidate pay at monthly rate equal to the basic pay of an enlisted member in the pay grade E-5 with less than 2 years service.*

*(2) An individual who graduates from such program shall receive credit for the time spent participating in such program as if such time were time served while on active duty as a commissioned officer. If the individual does not graduate from such program, such time shall not be considered creditable for active duty or pay.*

## TITLE 38. VETERANS' BENEFITS

### CHAPTER 1. GENERAL

#### § 101. Definitions

- \*            \*            \*            \*            \*            \*
- (21) The term "active duty" means—
- (A) full-time duty in the Armed Forces, other than active duty for training;
  - (B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service
    - (i) on or after July 29, 1945, or
    - (ii) before that date under circumstances affording entitlement to "full military benefits" or
    - (iii) at any time, for the purposes of chapter 13 of this title;
  - (C) full-time duty as a commissioned officer *in the commissioned officer corps* of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey
    - (i) on or after July 29, 1945, or
    - (ii) before that date
      - (I) while on transfer to one of the Armed Forces, or
      - (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or



(III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter,  
or

(iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

\* \* \* \* \*

#### CHAPTER 43. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

##### § 4303. Definitions

\* \* \* \* \*

(16) The term “uniformed services” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, *the commissioned officer corps of the National Oceanic and Atmospheric Administration*, and any other category of persons designated by the President in time of war or national emergency.