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OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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OPNAVINST 1120.11A
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OPNAV INSTRUCTION 1120.11A

From: Chief of Naval Operations

Subj: APPOINTMENT OF ACTIVE AND RESERVE OFFICERS IN THE NAVY
JUDGE ADVOCATE GENERAL'S CORPS

Ref: (a) DoD Instruction 1310.02 of 26 March 2015
(b) SECNAVINST 1520.7F
(c) DoD Instruction 1205.05 of 30 March 2012
(d) SECNAVINST 1000.7F
(e) 10 U.S.C.
(f) DoD Instruction 1312.03 of 22 November 2013
(g) OPNAVINST 1210.5
(h) SECNAVINST 1420.1B
(i) Program Authorization 111A
(j) OPNAVINST 1420.1B
(k) SECNAVINST 5300.28E
(l) NAVMED-P-117, Manual of the Medical Department
(m) SECNAVINST 1920.6C
(n) OPNAVINST 1427.1A

Encl: (1) JAGC Student Program
(2) Computation Rules

1. Purpose

a. To establish regulations governing:

(1) Appointment of officers in the Judge Advocate General's Corps (JAGC), including appointment in the Active Component under references (a) and (b), in the Reserve Component under reference (c), and in either component through inter-service transfer from another uniformed Service under reference (d).

(2) Voluntary recall of officers of the JAGC to the active duty list (ADL).

(3) Award of entry grade credit upon appointment in the JAGC under sections 533 and 12207 of reference (e) and reference (f).

b. This instruction is being reissued with a new date, updated version, and signature authority to meet Chief of Naval Operations' age requirement for Office of the Chief of Naval Operations (OPNAV) instructions.

2. Cancellation. OPNAVINST 1120.11.

3. Applicability. This instruction applies to all individuals appointed as active or reserve officers in the Navy JAGC, including officers transferred from another uniformed Service, reserve officers transferred into the Active Component, reserve officers voluntarily recalled to the ADL, and officers transferred from the line or another staff corps into the JAGC.

a. Additional guidance on the transfer of officers from other uniformed Services into the JAGC is found in reference (d).

b. Additional guidance on the transfer of Reserve JAGC officers into the Active Component of the JAGC, and the transfer of active and reserve officers between the line and the JAGC or between another staff corps and the JAGC, is found in reference (g).

c. Additional guidance on the transfer of active and reserve officers between the line and the JAGC and between another staff corps and the JAGC through the Law Education Program (LEP) is found in reference (b).

4. Policy. The Department of the Navy will maintain authorized strength and grade levels in the JAGC by recruiting personnel required to support the annual 5-year promotion plan approved under reference (h), to provide a base for an Active Component career force, and to attain authorized strength in the Reserve Component to meet approved requirements for mobilization.

a. Requirements for newly appointed officers on the ADL will be met primarily through law student programs (JAGC Student Program and LEP) and by direct appointment of civilian attorneys (JAGC Direct Appointment Program), supplemented by the transfer of line and other staff corps officers to the JAGC and enlisted commissioning through the JAGC In-Service Procurement Program.

Requirements for officers on the ADL in career grades that cannot be filled by promotion may be met by transfer from the reserve, by direct procurement of former military officers and civilian attorneys, and by voluntary recall to active duty of officers from the Reserve Component, all of whom must meet the professional qualifications of subparagraph 7a.

(1) The JAGC Direct Appointment Program will be used to commission graduates of law schools approved by the American Bar Association (ABA), who have been admitted to practice law before a Federal court or the highest court of a state, territory, commonwealth, or the District of Columbia. For officers entering the Navy under this program, total service commitment will be 8 years (4 years on active duty followed by 4 years in the Individual Ready Reserve (IRR)).

(2) The JAGC Student Program will be used to commission law school students into the Navy IRR as line officers under instruction (designator 1955). They will remain in an IRR status while attending an ABA-approved law school, except when called to active duty for training at Officer Development School (ODS) or other training as ordered. For officers entering the Navy under the JAGC Student Program, total service commitment on active duty or in the Navy Reserve will be 8 years (4 years on active duty followed by 4 years in the IRR). Guidance with regard to the JAGC Student Program is included in enclosure (1).

(3) The LEP will provide experienced commissioned officers to meet the needs of the Navy as career force judge advocates. Officers selected for this program will be detailed annually to ABA-approved law schools for the purpose of obtaining law degrees and subsequently serving in the Navy as career judge advocates. Eligibility criteria and service commitment upon completion are set forth in reference (b).

(4) The JAGC In-Service Procurement Program will provide enlisted Sailors an opportunity for commissioning in the JAGC on the ADL as described in reference (i). Eligibility criteria and service commitment upon completion are set forth in reference (j).

b. Requirements for the Reserve Component (designator 2505) will be filled primarily through transfer of officers from the

ADL. Requirements that cannot be met from this source, and requirements in advanced grades that cannot be met by promotion, may be met by directly procuring former military officers and other civilian attorneys who meet the professional requirements of subparagraph 7a.

5. Accession Plans

a. Deputy of Chief of Naval Operations, Manpower, Personnel, Training and Education (CNO (N1)) will establish an annual accession plan to support authorized strength in the JAGC within total Navy authorized strength. There must be sufficient accessions to support the annual 5-year promotion plan for the Active and Reserve Components, ensuring the promotion opportunity and flow necessary to meet authorized strength requirements.

b. In determining the proportions of accession programs used to attain and maintain the JAGC, factors will include cost effectiveness; current and projected supply and demand for attorneys; retaining flexibility to adjust to changes in the civilian market and in specialty requirements; and providing reasonable career progression opportunities for those attorneys entering the JAGC.

6. Basic Qualifications. To be eligible for appointment as a JAGC officer in the Navy, the applicant must meet the requirements in subparagraphs 6a through 6d.

a. Citizenship. Must be a citizen of the United States.

b. Age. Must be at least 21 years old and be able to complete 20 years of commissioned service before his or her 62nd birthday. CNO (N1) may waive the age restriction up to age 60 for otherwise qualified applicants for appointment as a Reserve Component officer. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) may further waive the age restriction for otherwise qualified applicants above age 60 for appointment as a Reserve Component officer.

(1) Age limits may be waived in the instances per subparagraphs 6b(1)(a) through 6b(1)(c).

(a) When a manning shortfall exists that cannot be filled by in-zone promotions under the annual 5-year promotion plan or by recruiting candidates who meet age requirements.

(b) When extraordinary circumstances indicate such a waiver to be in the best interest of the naval service.

(c) When a gross inequity to the applicant would otherwise result.

(2) Before appointment, applicants who will be unable to complete 20 years of creditable service by age 62 will complete a statement of understanding acknowledging that pursuant to current and future policy, they may be ineligible for full retirement benefits.

c. Moral Character. Must be of good moral character and of unquestioned loyalty to the United States as determined by interview and investigation. As prescribed in reference (k), individuals who are chemically dependent; who abuse drugs or alcohol; whose pre-service abuse of drugs or alcohol indicate a proclivity for continued abuse; or who have a record of any drug trafficking offenses, must not be permitted to enter the JAGC.

d. Physical Standards. Must meet the physical standards for service established by the Chief, Bureau of Medicine and Surgery (BUMED) and approved by the Chief of Naval Operations. Commander, Navy Recruiting Command (COMNAVCRUITCOM), upon recommendation of BUMED, may grant waivers for physical defects that will not interfere with performance of duties within the guidelines of reference (l).

7. Professional Qualifications

a. To be eligible for direct appointment in the JAGC (designator 2500) or for voluntary recall to the ADL, the applicant must have obtained a law degree (Juris Doctor) from an ABA-approved law school under provisions established by the ABA at the time of the applicant's graduation, and must be admitted to practice before a Federal court or the highest court of a state, territory, commonwealth, or the District of Columbia.

b. Officers who are participants in the JAGC Student Program (designator 1955) need not have been admitted to

practice law to be eligible for a superseding appointment in the JAGC to designator 2500. They are eligible for their superseding appointment in the JAGC if they have met the requirements in subparagraphs 7b(1) through 7b(3).

(1) Graduated from a law school, which at the time of the officer's graduation was considered to be ABA-approved under provisions established by the ABA.

(2) Received official notification of passing the bar examination and all other testing requirements required for admission to practice before a Federal court or the highest court of any state, territory, commonwealth, or the District of Columbia.

(3) Commenced extended active duty at Naval Justice School (NAVJUSTSCOL) or as approved by the JAGC.

c. Officers in the JAGC Student Program who fail to complete the prescribed course of instruction at ODS or NAVJUSTSCOL will be administratively processed for separation under reference (m). Officers who fail to graduate from law school; fail to take the first bar examination available after graduation from law school; twice fail a bar examination in two consecutive attempts, or other testing requirements for admission to the bar; otherwise fail to become admitted to practice as required under subparagraph 7a; or fail to attend ODS or NAVJUSTSCOL will be reappointed in another competitive category to complete any active duty obligation incurred as a result of appointment in the JAGC Student Program, or, if so determined by CNO (N1), will be separated under reference (m).

d. Officers who are participants in the LEP and assigned to law school under reference (b) need not have been admitted to practice law to be eligible for a superseding appointment in the JAGC. An officer may be appointed in the JAGC at any time after selection for the LEP at the discretion of CNO (N1). Appointment in advance of graduation from law school may be authorized, for example, to prevent an LEP participant from being a twice failure of selection in the current designator or filling a selection quota at a disadvantage to his or her peers. The conditions for appointment cited in subparagraphs 7d(1) through 7d(3) will apply.

(1) Active or reserve status will not change. If appointed as a reserve officer, an LEP participant will be re-designated as an Active Component officer per reference (g).

(2) Officers will be awarded entry grade credit per paragraphs 9 and 10.

(3) Officers will be appointed under section 531 or 593 of reference (e) in a grade determined on the basis of entry grade credit awarded under paragraph 9.

e. Professional qualification requirements for participants in the JAGC In-Service Procurement Program are described in reference (j).

8. Examination of Professional Qualifications. The judge advocate general (JAG) will examine and certify the professional qualifications of all applicants for appointment or recall in the JAGC and as line officers under instruction in the JAGC Student Program. The JAG will be the sole judge of all such applicants' professional qualifications. Once the JAG has certified an applicant as professionally qualified, CNO (N1), or COMNAVCRUITCOM acting for CNO (N1), will determine whether the applicant is otherwise qualified for appointment, except for those seeking appointment under references (b) and (g), for whom CNO (N1) will be responsible.

9. Entry Grade Credit. Entry grade and date of rank upon appointment in the JAGC will be based upon prior active commissioned service, advanced education, training, and or special experience as indicated in the following table.

Entry Grade Credit Table

<u>Qualification</u>	<u>Entry Grade Credit</u>
(1) ADL commissioned service in any of the uniformed Services.	Refer to paragraph 11 and enclosure (2).
(2) Juris Doctor awarded per subparagraph 7a.	3 years
(3) Unusual cases involving special experience or unique qualifications as determined by the Secretary of the Navy.	1-half year for each year, up to a maximum of 3 years of credit.

10. Limits and Computation of Entry Grade Credit. Entry grade credit will be computed as per subparagraphs 10a through 10f.

a. A period of time or a special qualification will be counted only once, except as allowed under subparagraph 10e.

b. Qualifying periods of less than 1 full year will be proportionately credited.

c. Credit will not be awarded for service as a chief warrant officer.

d. Graduates of the Service academies will not be awarded credit for any service performed, education, training, or experience obtained, before graduation from the academy concerned.

e. Entry grade credit will not be awarded under notes (2) and (3) of the entry grade credit table (paragraph 9) for education, training, or experience obtained while serving as a commissioned officer on active duty. However, entry grade credit will be awarded for advanced education or an advanced degree if an officer, while in the JAGC Student Program, completed the advanced education or received the advanced degree in less than the number of years normally required to complete such advanced education or receive such advanced degree.

f. Detailed guidelines for the computation of entry grade credit are set forth in enclosure (2).

11. Maximum Entry Grade Credit. To obtain experienced former active duty commissioned officers who can compete for career status while maintaining uniform and stable management of the JAGC community, total entry grade credit granted, other than for officers accessed through the LEP, will be limited to 48 months.

a. The ASN (M&RA), considering the recommendations of the CNO (N1), may waive this limit per the circumstances in subparagraphs 11a(1) through 11a(3).

(1) For appointment on the ADL when there is a shortage against authorized strength, which cannot be met by:

(a) Accessions from the LEP under reference (b);

(b) Voluntarily recalling qualified officers from the Reserve component; or

(c) In-zone promotion under the 5-year promotion plan approved by the Secretary of the Navy.

(2) For appointment in the Selected and Ready Reserve component when there is a shortage against authorized strength, which cannot be met by:

(a) Transfer of officers from the ADL; or

(b) Directly procuring former military officers and civilians.

(3) When a gross inequity to the applicant would otherwise result.

b. Before appointment, selectees for whom a waiver is granted must acknowledge in writing that, although they remain eligible and subject to recall to active duty, they may not be permitted to transfer onto the ADL.

12. Appointments. Appointments in the JAGC will be made subject to the guidance governing entry grade, date of rank, and precedence, per subparagraphs 12a through 12k.

a. Entry Grade. A selectee will not be appointed in a grade higher than lieutenant commander. The ASN (M&RA) may consider requests for waiver of the foregoing limitation subject to the provisions of paragraph 11. The following table provides minimum entry grade credit required for appointments in grades ensign (O-1) through lieutenant commander (O-4).

Grade	Minimum Years of Entry Grade Credit
Ensign	0 years
lieutenant (junior grade)	2 years (or the applicable promotion flow point)
lieutenant	4 years (or the applicable promotion flow point)
lieutenant commander	10 years (or the applicable promotion flow point)

b. Selectee Who Has Not Been a Commissioned Officer. Selectees will be appointed in a grade and with a date of rank calculated from the inception date of the selectee's class at ODS or NAVJUSTSCOL, based on the selectee's commissioning source. Guidelines for computation and application of entry grade credit are set forth in paragraph 1 of enclosure (2).

c. Selectee Who is or Was a Commissioned Officer (other than as a chief warrant officer or a participant in the JAGC Student Program or LEP). Selectees will be appointed in the same grade and with the same date of rank as the equivalent officer in the JAGC on the ADL of the Navy who:

(1) Was originally appointed in the JAGC from a civilian status with no prior commissioned service;

(2) Has been on continuous active duty since appointment in the JAGC;

(3) Was promoted under sections 533 and 12207 of reference (e) in due course to all grades in which served;

(4) Has not lost numbers or precedence on the lineal list or ADL; and

(5) Has, on the date of the selectee's appointment in the JAGC, active commissioned service which, when combined with the constructive service credit credited upon appointment, is equal to, or most nearly equal to, the entry grade credit of the selectee. Guidelines for computation and application of entry grade credit are set forth in paragraph 2 of enclosure (2).

d. Selectee Who is a Participant in the JAGC Student Program. A selectee will have entry grade credit applied so that he or she will have the same grade and date of rank as the equivalent officer in the JAGC described in subparagraph 12c. In determining equivalent officers for student program selectees who were appointed as line officers as prospective JAGC officers, constructive service credit and prior commissioned service credit earned before entering into the JAGC Student Program will be applied upon their appointment as a JAGC officer (designator 2500). Guidelines for computation and application of entry grade credit are set forth in paragraph 3 of enclosure (2).

e. Selectee Who is a Participant in the LEP. A selectee may be assigned a date of rank in the grade reflecting the amount by which that officer's service credit exceeds the minimum years of entry grade credit required for appointment in the grade in which appointed determined as of the date of that officer's appointment.

f. Selectee Who is a Participant in the JAGC In-Service Procurement Program. Selectees will be appointed in a grade and with a date of rank calculated from the inception date of the selectee's class at ODS. Guidelines for computation and application of entry grade credit are set forth in paragraph 1 of enclosure (2).

g. Date of Rank When the Minimum Entry Grade Credit Required for Appointment in a Given Grade is Granted. In such cases, the date of rank will be the date of appointment. When the entry grade credit exceeds the minimum years required for appointment in a given grade, the excess credit will adjust the date of rank within grade. The selectee's excess entry grade credit will be compared with the time-in-grade of JAGC officers on the ADL in the same grade. The date of rank upon appointment will be the same as that of the JAGC officer on the ADL in the same grade with time-in-grade most equal to, but not less than, the selectee's excess entry grade credit.

h. Assignment of Precedence. Each selectee will be placed on the ADL or assigned an equivalent officer to be tracked with as per subparagraphs 12h(1) and 12h(2).

(1) If upon appointment in the JAGC, the selectee is ordered to active duty (other than active duty as a reserve officer as described in section 641(1) of reference (e)) or is on active duty at the time of such appointment, he or she will be placed on the ADL.

(2) If the selectee is appointed to the grade of lieutenant (junior grade) or above, but is not concurrently ordered to active duty and placed on the ADL of the Navy, he or she may be assigned a "running mate" under reference (n).

i. Constructive Date of Rank as Ensign. Selectees awarded entry grade credit will be assigned a constructive date of rank as ensign computed following the guidelines in enclosure (2).

j. Application Processing. All qualified applicants accepted for appointment will be commissioned within 60 days following receipt of a complete application by COMNAVCRUITCOM or, where required, their nominations will be forwarded to the Senate for confirmation within 60 days. CNO (N1) may authorize delayed commissioning when the applicant requests a later time.

k. Return to Former Status. An officer who attends law school under the LEP will return to his or her former status (line or staff corps) per reference (b) if the officer in any manner fails to meet the professional qualifications in subparagraph 7a. For rules regarding disenrollment of Sailors from JAGC In-Service Procurement Program, see reference (j).

13. Responsibilities

a. CNO (N1) is responsible for:

(1) Procurement and appointment of JAGC officers;

(2) Establishment of the annual accession plan; and

(3) Approval of entry grade credit and establishment of entry grades and dates of rank of JAGC officers.

b. JAG is responsible for certifying professional qualifications and calculating entry grade credit.

c. COMNAVCRUITCOM will prepare appointment documents based upon entry grade computations by the JAGC General Litigation division (JAG-14).

14. Records Management. Records created as a result of this instruction, regardless of media and format, must be managed per Secretary of the Navy Manual 5210.1 of January 2012.



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JAGC STUDENT PROGRAM

1. Purpose. To aid in attaining future accession requirements for the JAGC on the ADL and in the Reserve Component, CNO (N1) will conduct a JAGC Student Program within the following guidelines.

2. Eligibility. Candidates must meet the basic qualifications in paragraph 6 of the instruction, except that no age waivers will be granted, and must satisfy one of the criteria in subparagraph 2a or subparagraph 2b.

a. Be matriculated and have completed 1 year in a program of professional study in law leading to a Juris Doctor in a law school qualifying under subparagraph 7a of the instruction, and within 2 years of graduating; or

b. Be awaiting the first opportunity to take a bar examination and admission to practice before a Federal court or the highest court of a state, territory, commonwealth, or the District of Columbia, after having attained a Juris Doctor from a school qualifying under subparagraph 7a of the instruction.

3. Appointments. Candidates selected for the program will be appointed as officers under instruction, JAGC (designator 1955), in the IRR during the period of their professional studies. The conditions in subparagraph 3a through 3e will apply.

a. They will serve without pay or allowances while in a student status except during periods of active duty;

b. They will become admitted to practice law per subparagraph 7a of the instruction;

c. They will successfully complete ODS. This requirement may be waived by CNO (N1) in the case of an officer with prior commissioned service;

d. Upon satisfaction of the requirements of subparagraph 7b of the instruction, candidates will accept a superseding appointment in the JAGC (designator 2500) on the ADL, if offered;

e. Total service obligation is 8 years. For officers appointed to the ADL, the initial active duty obligation is 4 years, which will begin to run upon satisfaction of the requirements in subparagraphs 3e(1) through 3e(3).

(1) Commencement of extended active duty;

(2) Admission to practice before a Federal court or the highest court of a state, territory, commonwealth, or the District of Columbia; and

(3) Successful completion of NAVJUSTSCOL training.

4. Disenrollment. Officers in the JAGC Student Program are subject to the provisions of reference (m). They may be disenrolled and separated from the Navy Reserves under subparagraph 7c of the instruction for:

a. Academic failure or failure to maintain satisfactory standing while enrolled in law school under the standards of the school in which enrolled;

b. Suspension or expulsion from law school;

c. Discontinuation of professional training or withdrawal from law school;

d. Failure to obtain a Juris Doctor within 2 years from commissioning in the JAGC Student Program;

e. Failure to take or pass a bar examination or any other testing requirement necessary for admission to a Federal court or the highest court of a state, territory, commonwealth, or the District of Columbia in two consecutive attempts;

f. Failure to become admitted to practice, as required in subparagraph 7a of the instruction, within 1 year of graduation from law school; or

g. Failure to commence extended active duty within 6 months of official notification of successful completion of all testing requirements needed for admission to a Federal court or the highest court of a state, territory, commonwealth, or the District of Columbia.

5. Superseding Appointment in the JAGC. CNO (N1) should offer superseding appointments in the JAGC to successful student program students to the extent necessary to meet current-year accession plan requirements for the ADL and the Reserve Component.

a. Selection will be based on criteria established by CNO (N1) and the JAG.

b. Officers receiving a superseding appointment who fail to become admitted to practice law per subparagraph 7a of the instruction within 6 months of graduation from NAVJUSTSCOL should be separated per subparagraph 7c.

6. Active Duty for Training. JAGC Student Program officers will be called to active duty to attend ODS.

COMPUTATION RULES

1. Direct Appointment Selectee Who Has Not Been a Commissioned Officer and JAGC In-Service Procurement Program Selectee. A selectee who has not previously served as an officer in a grade above chief warrant officer, W-5, will be credited upon appointment in the JAGC with 3 years constructive service credit for obtaining a Juris Doctor degree. See item (2) of the entry grade credit table in paragraph 9 of the instruction. A constructive date of rank as ensign will be calculated by subtracting the entry grade credit from the inception date of the selectee's class at ODS.

2. Direct Appointment Selectee with Prior Commissioned Service (other than as a chief warrant officer or a participant in the LEP)

a. Computation of Constructive Service Credit. A selectee who has previously served as an officer other than as a warrant officer or a participant in the LEP will be credited upon appointment in the JAGC with 3 years of constructive service credit for obtaining a Juris Doctor degree. See item (2) of the entry grade credit table in paragraph 9 of the instruction.

b. Computation of Prior Commissioned Service Credit. For appointment in the JAGC, a selectee will be credited with 1 day of service credit for each day of active prior service as a commissioned officer performed in any uniformed Service up to a maximum of 1 year, plus 3 years of constructive service credit under subparagraph 2a. Entry grade credit (prior commissioned service credit plus constructive service credit) will total not less than 3 years and no more than 4 years. A constructive date of rank as ensign will be calculated by subtracting the total entry grade credit from the inception date of the selectee's class at ODS. If the requirement for ODS is waived by CNO (N1), the constructive date of rank as a lieutenant will be the first day of the month of inception at NAVJUSTSCOL.

3. Student Program Selectee Who Has Not Been a Commissioned Officer. A selectee who has not previously served as an officer in a grade above chief warrant officer, W-5, will be credited upon appointment in the JAGC with 3 years of constructive service credit for obtaining a Juris Doctor degree. See item (2) of the entry grade credit table in paragraph 9 of the

instruction. A constructive date of rank as ensign will be calculated by subtracting the entry grade credit from the inception date of the selectee's class at NAVJUSTSCOL.

4. Student Program Selectee With Prior Commissioned Service (other than as a chief warrant officer or a participant in LEP)

a. Computation of Constructive Service Credit. A selectee who has previously served as an officer other than as a chief warrant officer or a participant in the LEP will be credited upon appointment in the JAGC with 3 years constructive service credit for obtaining a Juris Doctor degree. See item (2) of the entry grade credit table in paragraph 9 of the instruction.

b. Computation of Prior Commissioned Service Credit. For appointment in the JAGC as a reserve officer, a selectee will be credited with 1 day of service credit for each day of prior service as a commissioned officer performed on active duty in any uniformed Service up to a maximum of 1 year, plus 3 years of constructive service credit under subparagraph 2a. Entry grade credit (prior commissioned service credit plus constructive service credit) will total not less than 3 years and no more than 4 years. A constructive date of rank as ensign will be calculated by subtracting the total entry grade credit from the inception date of the selectee's class at ODS, or, if the requirement for ODS is waived by CNO (N1), from the inception date of the selectee's class at NAVJUSTSCOL.

5. Cases Involving Special Experience or Unique Qualifications. In addition to the provisions of paragraphs 1 through 4, entry grade credit should be granted in cases involving special experience or unique qualifications at the rate of 1-half year for each year up to a maximum of 3 years of credit per the entry grade credit table in paragraph 9 of the instruction, subject to the provisions of paragraph 11 of the instruction.