

or Regular Marine Corps during war or national emergency.

Section 5539, acts Aug. 10, 1956, ch. 1041, 70A Stat. 320; Sept. 2, 1958, Pub. L. 85-861, §1(116), 72 Stat. 1493; Sept. 7, 1962, Pub. L. 87-649, §14c(27), 76 Stat. 501, provided for voluntary extension or re-extension of enlistments in Regular Navy or Regular Marine Corps.

#### § 5540. Expiration: rights of member

(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States.

(b) Each member retained under this section—

(1) shall be discharged not later than 30 days after his arrival in the United States; and

(2) except in time of war is entitled to an increase in basic pay of 25 percent.

(c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 320.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
5540 .....	34 U.S.C. 201.	R.S. 1422; Mar. 3, 1875, ch. 155, 18 Stat. 484.
	34 U.S.C. 201a.	Aug. 18, 1941, ch. 364, §4, 55 Stat. 630.
	34 U.S.C. 201b.	Dec. 13, 1941, ch. 570, §2, 55 Stat. 799.

In subsection (a) the words “the senior officer present afloat” are substituted for the words “the commanding officer of any fleet, squadron, or vessel acting singly” to modernize the terminology. At the time of the enactment of the Revised Statutes the word “squadron” meant an organization of any number of vessels more than one, so that all cases were covered by R.S. 1422. The concept of “senior officer present afloat”, today, covers as nearly as possible the current equivalent of the concept in the original section. The words “in foreign waters” are inserted to conform to the interpretation of the Supreme Court in *Wilkes v. Dinsman*, 7 How. 89 (1849). The words “on service” are omitted, as they have no current ascertainable meaning. The words “by Government or other transportation” are substituted for the words “in some public or other vessel”, since this provision is interpreted as directing transportation by either ship or aircraft. The words “to the United States” are substituted for the words “to an Atlantic or to a Pacific port of the United States, as their enlistment may have occurred on either the Atlantic or Pacific coast, of the United States” because aircraft now land at inland airports as well as coastal airports and the duty to return an enlisted member to the United States under this provision is considered complete upon the member’s arrival in the United States. The extensive transportation system in the United States presently obviates the necessity of returning a member to a particular area. Furthermore, under 37 U.S.C. 253, the Government bears the cost of transporting the discharged member to his home or to the place from which he was called to active duty. The words “enlisted member of the naval service” are substituted for the words “all petty officers and persons of inferior ratings” in accordance with present terminology. Members of the Marine Corps are included because of inter-

pretations of the Comptroller General, in construing the language of the statute. (14 Comp. Gen. 807, 808, May 1, 1935.) The reference to persons enlisted without the limits of the United States is omitted as unnecessary, since return to the United States is optional with the member and the basic rule applies irrespective of place of enlistment. The language requiring that persons who are detained or sent home be subject to the laws and regulations for the Government of the Navy is omitted as unnecessary in view of the Uniform Code of Military Justice. The provision referring to reentry to serve until the vessel returns to the United States is omitted because no law authorizes entry or reentry into the service for this restricted purpose.

In subsection (b) the words “an increase in basic pay of 25 percent” are substituted for the words “an addition of one-fourth of their former pay” in conformity with the Career Compensation Act of 1949. 34 U.S.C. 201b permanently suspended the detention pay increase in time of war and this effect is expressed in subsection (b)(2) by the words “except in time of war”. 34 U.S.C. 201a, declaring that the pay addition authorized by this section does not apply to enlistments extended under other provisions of law, is omitted as unnecessary, since the increased pay provision is specifically limited to detentions under this section.

In subsection (c) the term “enlistment contract” is substituted for the term “shipping-articles” to conform to present terminology.

#### CHAPTER 539—ORIGINAL APPOINTMENTS

Sec.	
[5571 to 5581. Repealed.]	
5582.	Regular Navy: transfers, line and staff corps.
[5583, 5584. Repealed.]	
5585.	Regular Marine Corps: order of filling vacancies in grade of second lieutenant.
[5586. Repealed.]	
5587.	Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.
5587a.	Regular Marine Corps: judge advocates.
[5588. Repealed.]	
5589.	Regular Navy and Regular Marine Corps: officers designated for limited duty.
[5590 to 5595. Repealed.]	
5596.	Navy and Marine Corps: temporary appointments of officers designated for limited duty.
[5597 to 5601. Repealed.]	

#### AMENDMENTS

1994—Pub. L. 103-337, div. A, title XVI, §1673(b)(2), Oct. 5, 1994, 108 Stat. 3016, struck out item 5600 “Naval Reserve and Marine Corps Reserve: service credit upon original appointment”.

1991—Pub. L. 102-190, div. A, title XI, §1113(d)(2)(B), Dec. 5, 1991, 105 Stat. 1502, struck out “warrant officers and” before “officers designated” in item 5596.

1981—Pub. L. 97-22, §10(b)(7), July 10, 1981, 95 Stat. 137, struck out item 5573a “Regular Navy and Regular Marine Corps: from reserve and temporary officers” and in item 5596 substituted “Navy and Marine Corps: temporary appointments of warrant officers and officers designated for limited duty” for “Navy and Marine Corps: temporary appointments”.

1980—Pub. L. 96-513, title V, §503(28), Dec. 12, 1980, 94 Stat. 2913, struck out items 5571 “Regular Navy and Regular Marine Corps: citizenship of officers”, 5572 “Regular Navy and Regular Marine Corps: appointing power” 5573 “Regular Navy and Regular Marine Corps: from graduates of the Naval Academy”, 5574 “Regular Navy: Medical Corps”, 5575 “Regular Navy: Supply Corps”, 5576 “Regular Navy: Chaplain Corps”, 5577 “Regular Navy: Civil Engineer Corps”, 5578 “Regular Navy: Dental Corps”, 5578a “Regular Navy: Judge Advocate General’s Corps”, 5579 “Regular Navy: Medical Service Corps”, 5580 “Regular Navy: Nurse Corps”, 5581 “Naval Reserve: Medical Corps, Dental Corps, Medical