

2915; Pub. L. 98-94, title IX, §923(c)(4), Sept. 24, 1983, 97 Stat. 643.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6404	34 U.S.C. 410c(a) (1st proviso).	Feb. 21, 1946, ch. 34, §7 (a) (1st proviso), 60 Stat. 27; Aug. 7, 1947, ch. 512, §432(a), 61 Stat. 881.
	34 U.S.C. 410j(g) (1st proviso).	Aug. 7, 1947, ch. 512, §312(g) (1st proviso), 61 Stat. 860.
	34 U.S.C. 410d (1st proviso).	Feb. 21, 1946, ch. 34, §9 (1st proviso), 60 Stat. 28; Aug. 7, 1947, ch. 512, §432(b), 61 Stat. 881.
	34 U.S.C. 410j(h) (1st proviso).	Aug. 7, 1947, ch. 512, §312(h) (1st proviso), 61 Stat. 860.
	34 U.S.C. 410r(h).	June 12, 1948, ch. 449, §207(h), 62 Stat. 368.
	34 U.S.C. 410r(j) (provisio).	June 12, 1948, ch. 449, §207(j) (provisio), 62 Stat. 366.
	34 U.S.C. 43g(g).	Apr. 16, 1947, ch. 38, §207(h), 61 Stat. 50; redesignated (g), Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882; May 16, 1950, ch. 186, §3(j), 64 Stat. 162.
34 U.S.C. 625h(a).	June 12, 1948, ch. 449, §213(a), 62 Stat. 369.	

The words “and a part of a year that is less than six months is disregarded” are added for clarity. The legislative history of the Career Compensation Act of 1949, which contains a provision identical to those codified in this section, indicates that all of these provisions are construed as requiring a fractional year of less than six months to be disregarded (hearing before the Committee on Armed Services of the Senate on H.R. 5007, 81st Cong., 1st sess., p. 313, July 6, 1949).

AMENDMENTS

1983—Pub. L. 98-94 substituted “each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded” for “a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded”.

1980—Pub. L. 96-513 substituted “separation pay” for “severance pay” in section catchline and substituted “separation pay” for “lump-sum payments” in text.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98-94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

[§ 6405. Repealed. Pub. L. 90-235, § 4(a)(12), Jan. 2, 1968, 81 Stat. 760]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 415, provided that an officer of Regular Navy, other than a retired officer, who accepted an appointment in the Foreign Service was considered as having resigned from the Navy. See section 973 of this title.

[§ 6406. Repealed. Pub. L. 91-482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; Pub. L. 87-649, §14c(47), Sept. 6, 1962, 76 Stat. 501, authorized Secretary of Navy to furlough any officer of Regular Navy or Regular Marine Corps, other than a retired officer.

[§ 6407. Repealed. Pub. L. 96-513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, related to communication with selection boards by officers eligible for consideration for continuation on active list. See section 614 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6408. Navy and Marine Corps; warrant officers, W-1: limitation on dismissal

(a) No officer who holds the grade of warrant officer, W-1, may be dismissed from the Navy or the Marine Corps except in time of war, by order of the President.

(b) The President may drop from the rolls of the Navy or the Marine Corps any officer who holds the grade of warrant officer, W-1, who—

(1) has been absent without authority for at least three months; or

(2) is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6408	50 U.S.C. 739 (as applicable to warrant officers, W-1, of the Navy and the Marine Corps).	May 5, 1950, ch. 169, §10 (as applicable to warrant officers, W-1, of the Navy and the Marine Corps), 64 Stat. 146.

This section reflects the opinion of the Judge Advocate General of the Navy (JAG:I:2:ERS:cmr, dtd. 13 April 1954) that 50 U.S.C. 739 applies to warrant officers (now warrant officers, W-1), of the Navy and the Marine Corps. The Warrant Officer Act of 1954 established the grade of warrant officer, W-1, in lieu of the former warrant officer (as distinguished from commissioned warrant officer) grades. 50 U.S.C. 739, as applicable to officers above the grade of warrant officer, W-1, is codified in §1161 of this title.

In subsection (a) the words “by sentence of a general court-martial, or in commutation thereof” are omitted since the separation from the service of a warrant officer, W-1, by sentence of court-martial is effected by dishonorable discharge.

In subsection (b) the words “from his place of duty” are omitted as surplusage. The words “at least” are substituted for the words “or more”. The words “by a court other than a court-martial or other military court” are substituted for the words “by the civil authorities”.

[§ 6409. Repealed. Pub. L. 90-235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, provided for suspension of laws for mandatory retirement or separation during war or emergency of temporary warrant officers of Navy and Marine Corps.

[§ 6410. Repealed. Pub. L. 103-337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 85-861, §1(144)(F), Sept. 2, 1958, 72 Stat. 1512; amended Pub. L. 104-106, div. A, title XV,

§ 1501(c)(28), Feb. 10, 1996, 110 Stat. 500, related to elimination from active status of officers in Naval Reserve and Marine Corps Reserve to provide a flow of promotion.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 575—RECALL TO ACTIVE DUTY

Sec.

[6481, 6482. Repealed.]

6483. Retired members: grade.

6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.

6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.

6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.

[6487, 6488. Repealed.]

AMENDMENTS

1984—Pub. L. 98-525, title V, § 533(f)(2), Oct. 19, 1984, 98 Stat. 2528, struck out item 6482 “Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall.”

1980—Pub. L. 96-513, title V, § 503(51), Dec. 12, 1980, 94 Stat. 2915, struck out items 6481 “Retired officers of the Regular Navy and Regular Marine Corps: authority to recall”, 6487 “Retired rear admirals: retired pay after two years of active duty”, and 6488 “Wartime appointments or promotions: retention of grade upon release from active duty”.

[§ 6481. Repealed. Pub. L. 96-513, title III, § 362(a), Dec. 12, 1980, 94 Stat. 2903]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, related to authority to recall retired officers of Regular Navy and Regular Marine Corps. See section 688 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 6482. Repealed. Pub. L. 98-525, title V, § 533(f)(1), Oct. 19, 1984, 98 Stat. 2528]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 417, provided that in time of war or national emergency Secretary of Navy could order to active duty any retired enlisted member of Regular Navy or Regular Marine Corps.

§ 6483. Retired members: grade

An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; Pub. L. 85-422, § 6(5), May 20, 1958, 72 Stat. 129; Pub. L. 88-132, § 5(m), Oct. 2, 1963, 77 Stat. 215; Pub. L. 90-623, § 2(10), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96-513, title III, § 363, Dec. 12, 1980, 94 Stat. 2903.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6483	34 U.S.C. 410n (1st proviso).	Aug. 7, 1947, ch. 512, § 412(a) (1st proviso), 61 Stat. 874; Oct. 12, 1949, ch. 681, § 522(a), 63 Stat. 835.
	50 U.S.C. 1052(c) (2d sentence).	July 9, 1952, ch. 608, § 413(c) (2d sentence), 66 Stat. 500.

Subsection (a) states the general rule that a retired officer, when recalled to active duty, shall be recalled in the grade he holds on the retired list. The rule is derived, not from a specific provision of law, but from the fact that special legislative authority is required to recall a retired officer in any other grade.

The desirability of including a positive statement of the rule is pointed up by the legislative history of the Act of February 21, 1946, ch. 34, § 8(a), 60 Stat. 28, amending the Act of July 24, 1941, ch. 320, § 10(d), 55 Stat. 605 (34 U.S.C. 350i(d)). The 1946 amendment states the rule, but only as to a limited class of retired personnel, namely persons temporarily appointed or promoted under the 1941 Act while on the retired list. The amendment provided that such persons, when released to inactive duty, should be given the highest grade in which they had served satisfactorily and, if subsequently recalled to active duty, should be recalled in the grade so accorded them. The legislative history shows that the bill (S. 1405, 79th Cong., 1st sess.), originally was written so as to provide that retired personnel should be recalled in their prior permanent grades or ratings instead of in the higher grades accorded them on the retired list while on inactive duty. When a member of the Naval Affairs Committee of the House of Representatives suggested an amendment to allow retired personnel to be recalled in the higher grades, the Navy spokesman pointed out that no law was required to permit this; in fact, retired personnel would be *required* to be recalled in the grades they hold on the retired list in the absence of any law to the contrary. Thus the result desired by the committee member could be achieved, simply by deleting the provision instead of amending it. After some discussion, however, it was decided to adopt the suggested amendment in order not to “leave things to inference” (H. Rept. No. 158, December 6, 1945, pp. 2290-2292).

Section 412(a) of the Officer Personnel Act of 1947 (34 U.S.C. 410n) (codified, except for the first proviso, in § 6150 of this title), supplies a further reason why a positive statement of the rule is desirable. That section provides that an officer who has been specially commended for the performance of duty in actual combat shall, when retired, be placed on the retired list in the grade next higher than that in which serving at the time of retirement. The first proviso, codified in subsection (b) of this section, provided further that an officer advanced under § 412(a) to a flag or general officer grade could be recalled either in the advanced grade or in the grade from which advanced. The law was silent as to the grade in which other officers advanced under § 412(a) should be recalled. It was understood that they would be recalled in the advanced grade accorded them on the retired list, because there was no authority to recall them in any other grade. However, the Comptroller General raised a question as to their right to the pay of the higher grade when recalled. Although the final decision of the Comptroller General was in favor of the higher pay (30 Comp. Gen. 242, December 20, 1950), the fact that the question was raised indicates the confusion that results from leaving the rule to inference.

It appears that the rule was never in doubt until after the enactment of the two recent laws cited above, one applying the rule to a limited class, and one stating a discretionary exception without stating the rule itself. These two laws make it more difficult than it was formerly to derive the correct conclusion by inference alone.