

**[§ 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 Repealed.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.

## AMENDMENTS

1980—Pub. L. 96-513 struck out provisions formerly set out as subsec. (a) which authorized each retired member of the naval service, when called to active duty, to be recalled in the grade held by him on the retired list and deleted subsec. (b) designation from remaining provisions.

1968—Subsec. (b). Pub. L. 90-623 inserted "former" before "section 6150".

1963—Subsec. (c). Pub. L. 88-132 repealed subsec. (c) which provided for recomputation of retired pay of retired members of the naval service, recalled to active duty in the higher grade for officers specially commended and released from such duty, on basis of the then monthly basic pay of the grade held on the retired list after continuous 2-year period of service. See section 1402 of this title.

1958—Subsec. (c). Pub. L. 85-422 added subsec. (c).

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

## EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88-132 effective Oct. 1, 1963, see section 14 of Pub. L. 88-132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

## EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-422 effective June 1, 1958, see section 9 of Pub. L. 85-422.

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

When on active duty, retired enlisted members of the Navy or the Marine Corps are eligible for promotion to higher enlisted grades or ratings. When released from active duty, they shall, unless entitled to a higher grade under another provision of law, retain the grades or ratings they hold at the time of their release.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

## HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6484 .....	34 U.S.C. 434.	July 1, 1918, ch. 114, 40 Stat. 719 (1st 9 lines of 2d par.).

The words "who has been ordered into active service since April 6, 1917" are omitted as executed. The words "to higher enlisted grades or ratings" are inserted for clarity. The eligibility of retired enlisted men for appointments to warrant and commissioned grades is covered by chapter 539 of this title where the requirements for these appointments are set forth. The words "unless entitled to a higher grade under another provision of law" are inserted to make it clear that retired enlisted members are not precluded by this section from obtaining the benefits of other provisions of law that may give a higher grade to them on their release from active duty.

The provision relating to pay, allowances, and benefits is omitted because it was superseded by §§514 and