

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

516 of the Career Compensation Act of 1949 (37 U.S.C. 314 and 316).

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

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent—

- (1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;
- (2) in time of national emergency declared by the President; or
- (3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; Pub. L. 95-79, title VIII, §805, July 30, 1977, 91 Stat. 333.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6485	34 U.S.C. 854d (1st 87 words of 2d proviso).	June 25, 1938, ch. 690, §205 (1st 87 words of 2d proviso), 52 Stat. 1179; July 9, 1952, ch. 608, §808, 66 Stat. 508.
	34 U.S.C. 854e (less 2d through 5th provisos).	June 25, 1938, ch. 690, §206 (less 2d through 5th provisos), 52 Stat. 1179; Apr. 25, 1940, ch. 153, 54 Stat. 162.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, §803 (3d sentence), 66 Stat. 505.

In subsection (a) the words "A member of the Fleet Reserve or the Fleet Marine Corps Reserve" are substituted for the words "That men so transferred to the Fleet Reserve * * * or other provision of law" for clarity. It is clear from the legislative history of the Armed Forces Reserve Act of 1952 that the amendment to the second proviso of 34 U.S.C. 854d made by that Act was intended to cover all members of the Fleet Reserve and Fleet Marine Corps Reserve.

In subsection (b) the word "enlisted" is omitted as surplusage since only enlisted members may transfer to the Fleet Reserve and Fleet Marine Corps Reserve. The words "after 16 years' or more service" are omitted as surplusage since all the members of the Fleet Reserve and Fleet Marine Corps Reserve are in that category. The words "If any member fails to report for the physical examination" are substituted for the words "upon failure * * * of such member to report for inspection" to reflect the true meaning of the section. The words "Under such conditions as may be prescribed by the Secretary of the Navy" are omitted as unnecessary since the authority to order a forfeiture is entirely within the Secretary's discretion.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-79 struck out requirements relating to physical examinations for members of the Fleet Reserve and Fleet Marine Corps Reserve.

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

(a) Except as provided in subsection (b), the Secretary of the Navy may, at any time, release any member of the Fleet Reserve or the Fleet Marine Corps Reserve from active duty.

(b) In time of war or national emergency declared by Congress or by the President after January 1, 1953, a member of the Fleet Reserve or the Fleet Marine Corps Reserve, without his consent, may be released from active duty other than from active duty for training only if—

- (1) a board of officers convened at his request by an authority designated by the Secretary recommends the release and the recommendation is approved;
- (2) the member does not request that a board be convened; or
- (3) his release is otherwise authorized by law.

This subsection does not apply during a period of demobilization or reduction in strength of the Navy or the Marine Corps.

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

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
6486	34 U.S.C. 854d (3d proviso).	June 25, 1938, ch. 690, §205 (3d proviso); added July 9, 1952, ch. 608, §808, 66 Stat. 508.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, §803 (3d sentence), 66 Stat. 505.

In subsection (a) the words "or active duty for training" are omitted as covered by the term "active duty" as used in this revised title.

In subsection (b) the words "other than from active duty for training" are inserted since the term "active duty" as used in 34 U.S.C. 854d (3d proviso) does not include active duty for training. Clause (3) is inserted, since other provisions of law are necessarily exceptions to the general rule here stated. The words "or the Marine Corps" are inserted in the last sentence of subsection (b) to reflect the applicability of the section to the Fleet Marine Corps Reserve.

[[§§ 6487, 6488. Repealed. Pub. L. 96-513, title III, § 362(b), (c), Dec. 12, 1980, 94 Stat. 2903]

Section 6487, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to retirement pay of certain rear admirals who retire after serving two years on active duty in time of war or national emergency.

Section 6488, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to retention of certain wartime appointments or promotions upon release from active duty. See section 1370 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.

CHAPTER 577—DEATH BENEFITS; CARE OF THE DEAD

Sec. [6521.	Repealed.]
6522.	Disposition of effects.

AMENDMENTS

1958—Pub. L. 85-861, §1(145), Sept. 2, 1958, 72 Stat. 1512, struck out item 6521 "Allowance to dependents: designation of beneficiary".

[§ 6521. Repealed. Pub. L. 85-861, § 36B(21), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to allowances to dependents, and to designation of beneficiary. See sections 1475 et seq. of this title.