

§ 1176**TITLE 10—ARMED FORCES**

Subsecs. (d)(3), (h)(6). Pub. L. 103-160, §561(h)(1), substituted “September 30, 1999” for “September 30, 1995” wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103-160, §561(h)(2), substituted “fiscal year 1999” for “fiscal year 1996”.

1992—Subsec. (a). Pub. L. 102-484, §1052(16)(A), substituted “reserve component” for “Reserve component” after “transfer to a”.

Subsec. (b)(1), (2). Pub. L. 102-484, §4422(b)(1), (2), inserted “or full-time National Guard duty or any combination of active duty and full-time National Guard duty” after “active duty”.

Subsec. (b)(3), (4). Pub. L. 102-484, §4424(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: “if a Reserve, is on the active duty list; and”.

Subsec. (d)(1). Pub. L. 102-484, §1052(16)(B), substituted “before December 5, 1991” for “prior to the time this provision is enacted”.

Subsec. (e)(2). Pub. L. 102-484, §4406(a)(1), substituted “may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.” for “shall forfeit an amount of voluntary separation incentive payable for the same period that is equal to the total amount of basic pay, or compensation, received.”

Subsec. (e)(3). Pub. L. 102-484, §4406(a)(2), inserted at end “If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.”

Subsec. (e)(6). Pub. L. 102-484, §4406(b), struck out par. (6) which read as follows: “Years of service that form the basis of the payment under paragraph (5) may not be counted in computing eligibility for, or the amount of, annuities under title 5 or any other law providing annuities to Federal civilian employees.”

Subsec. (j). Pub. L. 102-484, §4405(b), added subsec. (j).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103-337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 4405(b) of Pub. L. 102-484 applicable as if included in this section as enacted Dec. 5, 1991, with any benefits or services payable by reason of applicability of that amendment during the period beginning Dec. 5, 1991, and ending Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub. L. 102-484, set out as a note under section 1174a of this title.

Section 4406(c) of Pub. L. 102-484 provided that: “The amendments to section 1175 of title 10, United States Code, made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991.”

PAYMENT OF INCENTIVES FROM VOLUNTARY SEPARATION INCENTIVE FUND

Pub. L. 104-208, div. A, title I, §101(b) [title VIII, §8044], Sept. 30, 1996, 110 Stat. 3009-71, 3009-98, provided that: “During the current fiscal year and hereafter, voluntary separation incentives payable under 10 U.S.C. 1175 may be paid in such amounts as are necessary from the assets of the Voluntary Separation Incentive Fund established by section 1175(h)(1).”

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department and prohibiting such members from receiving Voluntary Separation Incentive program payments if re-

hired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Section 662(b) of Pub. L. 102-190 provided that: “Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1152, 1153, 1174a of this title; title 29 section 1662d-1; title 38 section 3018B.

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) **REGULAR MEMBERS.**—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) **RESERVE MEMBERS IN ACTIVE STATUS.**—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member’s consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102-484, div. A, title V, § 541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103-160, div. A, title V, § 562(a), Nov. 30, 1993, 107 Stat. 1669; Pub. L. 104-106, div. A, title XV, § 1501(c)(12), Feb. 10, 1996, 110 Stat. 499.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 substituted “section 12732” for “section 1332” wherever appearing.

1993—Subsec. (b). Pub. L. 103-160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member’s consent before the earlier of certain dates.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 562(b) of Pub. L. 103-160 provided that: “Subsection (b) of section 1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.”

[§ 1177. Repealed. Pub. L. 104-134, title II, § 2707(a)(1), Apr. 26, 1996, 110 Stat. 1321-330]

Section, added Pub. L. 103-337, div. A, title V, § 560(a)(1), Oct. 5, 1994, 108 Stat. 2777; amended Pub. L. 104-106, div. A, title V, § 567(a)(1), title XV, § 1503(a)(12), Feb. 10, 1996, 110 Stat. 328, 511, related to mandatory discharge or retirement of members infected with HIV-1 virus.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 567(b) of Pub. L. 104-106, provided that this section, as amended by section 567(a) of Pub. L. 104-106, was applicable to members of Armed Forces determined to be HIV-positive before, on, or after Feb. 10, 1996, and that in case of member determined to be HIV-positive before Feb. 10, 1996, deadline for separation of member under former subsec. (a) of this section was to be determined from Feb. 10, 1996, rather than from date of such determination, prior to repeal by Pub. L. 104-134, title II, § 2707(b), Apr. 26, 1996, 110 Stat. 1321-330.

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.

- 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
- 1182. Boards of inquiry.
- 1183. Boards of review.
- 1184. Removal of officer: action by Secretary upon recommendation of board of review.
- 1185. Rights and procedures.
- 1186. Officer considered for removal: voluntary retirement or discharge.
- 1187. Officers eligible to serve on boards.

AMENDMENTS

1984—Pub. L. 98-525, title V, § 524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted “Authority to establish proce-

dures to consider the separation of officers for substandard performance of duty and for certain other reasons” for “Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons” in item 1181.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 617 of this title.

§ 1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added Pub. L. 96-513, title I, § 110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 98-525, title V, § 524(b)(1), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Pub. L. 98-525 substituted “Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons” for “Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons” in section catchline.

Subsecs. (a), (b). Pub. L. 98-525 amended subsecs. (a) and (b) generally, substituting “Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record” for “Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record”.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(b)(3) of Pub. L. 98-525 provided that: “The amendments made by paragraphs (1) and (2) [amending this section and the analysis to this chapter] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code, as in effect before that date.”