

90-130, §1(5), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96-513, title V, §511(41), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97-295, §1(16), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1164(a) .....	10:600(c) (as applicable to men). 10:600r(c) (as applicable to 10:600(c)). 34:430(c) (as applicable to men). 34:430c (as applicable to 34:430(c)).	May 29, 1954, ch. 249, §§14(c), (e) (as applicable to (c)), 21(c) (as applicable to §14(c)), 68 Stat. 163, 168.
1164(b) .....	10:600(c) (less applicability to men). 34:430(c) (less applicability to men).	
1164(c) .....	10:600(e) (as applicable to 10:600(c)). 34:430(e) (as applicable to 34:430(c)).	

In subsections (a) and (b), the words “Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section” are omitted as covered by section 46 of the bill and section 14(g) of the source statute. The words “Unless retired or separated on or before the expiration of that period” are inserted for clarity. The words “becomes 62[55] years of age” are substituted for the words “attains the age of sixty-two \* \* \* or the age of fifty-five”.

In subsection (c), the words “The Secretary concerned may defer” are substituted for the words “may, in the discretion of the Secretary, be deferred”. The words “not more than” are substituted for the words “a period not to exceed”. The words “determination of his” are inserted for clarity. The words “he would otherwise be required to be separated under this section” are substituted for the words “separation would otherwise be required”. The words “proper”, “which is required”, “possible”, and “a period of” are omitted as surplusage.

AMENDMENTS

1982—Pub. L. 97-295, §1(16), substituted a colon for a semicolon after “officers” in section catchline.

1980—Subsec. (b). Pub. L. 96-513 redesignated former subsec. (c) as (b).

Subsec. (c). Pub. L. 96-513 redesignated former subsec. (c) as (b).

1967—Subsec. (a). Pub. L. 90-130 struck out “male” before “warrant officer”.

Subsec. (b). Pub. L. 90-130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90-130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89-718 substituted “8301” for “47a” wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Act Aug. 10, 1956, ch. 1041, §46, 70A Stat. 638, provided that:

“(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later

than that date which is 60 days after the date on which he attains the age of 64.

“(b) The separation of any person who, on November 1, 1954, was a female permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 55 has completed less than 20 years of active service that could be credited to her under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, formerly set out as a note under section 580 of this title] may be deferred by the Secretary concerned until she completes 20 years of that service, but not later than that date which is 60 days after the date on which she attains the age of 60.”

§ 1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 96-513, title I, §109(b)(1), Dec. 12, 1980, 94 Stat. 2870.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1165 .....	10:600d (less last 36 words of last sentence). 34:135d (less last 36 words of last sentence).	May 29, 1954, ch. 249, §6 (less last 36 words of last sentence), 68 Stat. 159.

The words “in his discretion” are omitted as surplusage. The last 10 words of the last sentence are inserted for clarity.

AMENDMENTS

1980—Pub. L. 96-513 authorized entitlement, if the regular warrant officer is eligible therefor, to separation pay under section 1174.

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.

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 576 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70

Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 87-649, §6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 96-513, title I, §109(b)(2), Dec. 12, 1980, 94 Stat. 2870; Pub. L. 102-190, div. A, title XI, §1131(5), Dec. 5, 1991, 105 Stat. 1506.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
1166(a) .....	10:600m (less last 21 words of 3d sentence). 10:600(d) (as applicable to 10:600m). 34:430a (less last 21 words of 3d sentence). 34:135(d) (as applicable to 34:430a).	May 29, 1954, ch. 249, §§2(d) (as applicable to §15), 14(e) (as applicable to §15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166(b) .....	10:600(e) (as applicable to 10:600m). 34:430(e) (as applicable to 34:430a).	

In subsection (a), the words "he shall be separated" are substituted for the words "his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated" and "his appointment shall be terminated". The words "at least three" are substituted for the words "more than three" for clarity.

In subsection (b), the words "The Secretary concerned may defer" are substituted for the words "may, in the discretion of the Secretary, be deferred". The words "not more than" are substituted for the words "a period not to exceed". The words "he would otherwise be required to be retired or separated under this section" are substituted for the words "retirement \* \* \* would otherwise be required". The words "determination of his" are inserted for clarity. The words "which is required", "possible", "proper", and "a period of" are omitted as surplusage.

#### REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is section 511 of act Oct. 12, 1949, ch. 681, which was formerly set out as a note under section 580 of this title.

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-190 substituted "section 576" for "section 560".

1980—Subsec. (a). Pub. L. 96-513 provided that officers discharged under this section are entitled, if eligible therefor, to separation pay under section 1174 or severance pay under section 286a of title 14.

1962—Subsec. (a). Pub. L. 87-649 substituted "section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)" for "section 311 of title 37."

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

#### 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 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

### § 1167. Members under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a member sentenced by a court-martial to a period of confinement for more than six months may be separated from the member's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the member has served in confinement for a period of six months.

(Added Pub. L. 104-106, div. A, title V, §563(a)(1)(A), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 104-201, div. A, title X, §1074(a)(6), Sept. 23, 1996, 110 Stat. 2659.)

#### PRIOR PROVISIONS

A prior section 1167, acts Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87-509, §4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87-649, §6(f)(3), 76 Stat. 494, related to severance pay of regular warrant officers, prior to repeal by Pub. L. 96-513, title I, §109(b)(3), title VII, §701, Dec. 12, 1980, 94 Stat. 2870, 2955, effective Sept. 15, 1981.

#### AMENDMENTS

1996—Pub. L. 104-201 substituted "member has served" for "person has served".

### § 1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 87-651, title I, §106(b), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 101-189, div. A, title XVI, §1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

#### HISTORICAL AND REVISION NOTES

The new section 1168 of title 10 is transferred from section 1218(a) and (c) of title 10 as being more appropriate in the chapter on separation.

#### AMENDMENTS

1989—Subsec. (b). Pub. L. 101-189 substituted "facility of the Department of Veterans Affairs" for "Veterans' Administration facility".