

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-502 effective Dec. 1, 1976, see section 703(c) of Pub. L. 94-502, set out as an Effective Date note under section 3693 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

UNDUE HARDSHIP CASES

Pub. L. 95-202, title III, §305(c), Nov. 23, 1977, 91 Stat. 1444, provided that Administrator could provide equitable relief to educational institutions and accredited correspondence schools which were in possession of a veteran's or eligible person's benefit check payable to the veteran or person and mailed to the institution or school for certain courses or lessons completed by the veteran or person at the institution or school before certain dates in 1977 and which were holding a power of attorney executed by the veteran or person before Dec. 1, 1976, authorizing negotiation of the check.

§ 5302. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Secretary whenever the Secretary determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Secretary to the payee, or within such longer period as the Secretary determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Secretary that such notification was not actually received by such payee within a reasonable period after such date. The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Secretary shall, except as provided in subsection (c) of this section, waive payment of an indebtedness to the Department by the veteran (as defined in sections 101, 3701, and 3702(a)(2)(C)(ii) of this title), or the veteran's spouse, following default and loss of the property, where the Secretary determines that collection of such indebtedness would be against equity and good conscience. An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail with return receipt requested from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(c) The recovery of any payment or the collection of any indebtedness (or any interest thereon) may not be waived under this section if, in

the Secretary's opinion, there exists in connection with the claim for such waiver an indication of fraud, misrepresentation or bad faith on the part of the person or persons having an interest in obtaining a waiver of such recovery or the collection of such indebtedness (or any interest thereon).

(d) No certifying or disbursing officer shall be liable for any amount paid to any person where the recovery of such amount is waived under subsection (a) or (b).

(e) Where the recovery of a payment or overpayment made from the National Service Life Insurance Fund or United States Government Life Insurance Fund is waived under this section, the fund from which the payment was made shall be reimbursed from the National Service Life Insurance appropriation or the military and naval insurance appropriation, as applicable.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, §3102; Pub. L. 92-328, title II, §202(a), June 30, 1972, 86 Stat. 396; Pub. L. 96-466, title VI, §605(c)(3), Oct. 17, 1980, 94 Stat. 2211; Pub. L. 97-306, title IV, §407(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99-576, title VII, §701(69), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101-237, title III, §311, Dec. 18, 1989, 103 Stat. 2075; renumbered §5302, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §5, June 13, 1991, 105 Stat. 268; Pub. L. 102-83, §§4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 102-547, §12, Oct. 28, 1992, 106 Stat. 3645; Pub. L. 105-33, title VIII, §8033(b), Aug. 5, 1997, 111 Stat. 669.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-33 inserted "with return receipt requested" after "certified mail".

1992—Subsecs. (a), (b). Pub. L. 102-547 made technical correction to directory language of Pub. L. 102-54, §5. See 1991 Amendment note below.

1991—Pub. L. 102-40 renumbered section 3102 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in four places.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-54, §5(1), as amended by Pub. L. 102-547, inserted at end "The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application."

Subsec. (b). Pub. L. 102-83, §5(c)(1), substituted "3701" and "3702(a)(2)(C)(ii)" for "1801" and "1802(a)(2)(C)(ii)", respectively.

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places in first sentence.

Pub. L. 102-83, §4(a)(3), (4), substituted "Department" for "Veterans' Administration".

Pub. L. 102-54, §5(2), as amended by Pub. L. 102-547, substituted "101, 1801, and 1802(a)(2)(C)(ii) of this title" for "101 and 1801" and inserted at end "An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application."

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary's" for "Administrator's".

1989—Subsec. (b). Pub. L. 101-237, §311(1), substituted “shall, except as provided in subsection (c) of this section,” for “may”.

Subsec. (c). Pub. L. 101-237, §311(2), substituted “The recovery of any payment or the collection of any indebtedness (or any interest thereon) may not be waived under this section” for “The Administrator may not exercise the Administrator’s authority under subsection (a) or (b) of this section to waive recovery of any payment or the collection of any indebtedness (or any interest thereon)” and substituted “or bad faith” for “, material fault, or lack of good faith”.

1986—Subsec. (b). Pub. L. 99-576, §701(69)(A), substituted “the veterans” for “his” before “spouse”.

Subsec. (c). Pub. L. 99-576, §701(69)(B), substituted “the Administrator’s” for “his” in two places.

1982—Subsec. (a). Pub. L. 97-306 substituted “180 days” for “two years”, and inserted condition relating to such longer period as the Administrator determines is reasonable in cases demonstrated to involve actual failure of notification to payee.

1980—Subsec. (a). Pub. L. 96-466, §605(c)(3)(A), inserted “(or any interest thereon)” after “overpayments”.

Subsec. (c). Pub. L. 96-466, §605(c)(3)(B), inserted “(or any interest thereon)” after “indebtedness” in two places.

1972—Pub. L. 92-328 substituted “claims by the United States” for “overpayments” in section catchline, struck out “(except servicemen’s indemnity)” after “any benefits” in subsec. (a), struck out provisions relating to recovery of benefits from any person without fault on his part, and inserted provisions relating to an application for relief made within two years from the date of notification of the indebtedness by the Administrator to the payee, added subsecs. (b) and (c), redesignated former subsec. (b) as (d), and inserted reference to subsec. (b), and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable with respect to any indebtedness to the United States arising pursuant to chapter 37 of this title before, on, or after Aug. 5, 1997, see section 8033(c) of Pub. L. 105-33, set out as a note under section 3726 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-306, title IV, §407(b), Oct. 14, 1982, 96 Stat. 1445, provided that: “The amendments made by subsection (a) [amending this section] shall apply only with respect to notifications of indebtedness that are made by the Administrator of Veterans’ Affairs after March 31, 1983.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-466 effective Oct. 1, 1980, except as otherwise specifically provided, see section 802(f) of Pub. L. 96-466, set out as an Effective Date note under section 5314 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective June 30, 1972, see section 301(c) of Pub. L. 92-328, set out as a note under section 3713 of this title.

APPLICABILITY OF WAIVER AUTHORITY TO IMPROPER PAYMENTS, OVERPAYMENTS, AND INDEBTEDNESS ESTABLISHED BY THE ADMINISTRATOR PRIOR TO EFFECTIVE DATE OF PUB. L. 92-328

Pub. L. 92-328, title II, §202(b), June 30, 1972, 86 Stat. 397, provided that the waiver authority under subsec. (a) of this section is applicable to improper payments, overpayments, and indebtedness established by the Administrator prior to the effective date of Pub. L. 92-328 if application for relief was pending on June 30, 1972, or such an application was made within two years from June 30, 1972.

For effective date of Pub. L. 92-328, see Effective Date of 1972 Amendment notes set out under sections 1114, 1134, and 3713 of this title.

§ 5302A¹ Collection of indebtedness: certain debts of members of the Armed Forces and veterans who die of injury incurred or aggravated in the line of duty in a combat zone

(a) LIMITATION ON AUTHORITY.—The Secretary may not collect all or any part of an amount owed to the United States by a member of the Armed Forces or veteran described in subsection (b) under any program under the laws administered by the Secretary, other than a program referred to in subsection (c), if the Secretary determines that termination of collection is in the best interest of the United States.

(b) COVERED INDIVIDUALS.—A member of the Armed Forces or veteran described in this subsection is any member or veteran who dies as a result of an injury incurred or aggravated in the line of duty while serving in a theater of combat operations (as determined by the Secretary in consultation with the Secretary of Defense) in a war or in combat against a hostile force during a period of hostilities (as that term is defined in section 1712A(a)(2)(B)² of this title) after September 11, 2001.

(c) INAPPLICABILITY TO HOUSING AND SMALL BUSINESS BENEFIT PROGRAMS.—The limitation on authority in subsection (a) shall not apply to any amounts owed the United States under any program carried out under chapter 37 of this title.

(Added Pub. L. 110-252, title I, §1303(a)(1), June 30, 2008, 122 Stat. 2327.)

REFERENCES IN TEXT

Section 1712A(a)(2)(B) of this title, referred to in subsec. (b), was struck out by Pub. L. 112-239, div. A, title VII, §727(1)(B), Jan. 2, 2013, 126 Stat. 1811.

EFFECTIVE DATE

Pub. L. 110-252, title I, §1303(c), June 30, 2008, 122 Stat. 2328, provided that: “The amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [June 30, 2008], and shall apply with respect to collections of indebtedness of members of the Armed Forces and veterans who die on or after September 11, 2001.”

EQUITABLE REFUND

Pub. L. 110-389, title VIII, §801(b), Oct. 10, 2008, 122 Stat. 4185, provided that: “The Secretary of Veterans Affairs may refund to the estate of such person any amount collected by the Secretary (whether before, on, or after the date of the enactment of this Act [Oct. 10, 2008]) from a person who died while serving on active duty as a member of the Armed Forces if the Secretary determines that, under the circumstances applicable with respect to the deceased person, it is appropriate to do so.”

Pub. L. 110-252, title I, §1303(b), June 30, 2008, 122 Stat. 2327, provided that: “In any case where all or any part of an indebtedness of a covered individual, as described in section 5302A(a) of title 38, United States Code, as added by subsection (a)(1), was collected after September 11, 2001, and before the date of the enactment of this Act [June 30, 2008], and the Secretary of Veterans Affairs determines that such indebtedness would have been terminated had such section been in effect at such time, the Secretary may refund the amount so collected if the Secretary determines that the individual is equitably entitled to such refund.”

¹ So in original. Probably should be followed by a period.

² See References in Text note below.