

DELAYED APPLICATION OF EXCLUSION; ADDITIONAL  
WAGES CONSIDERED BENEFIT

Pub. L. 97-306, title IV, § 408(b), Oct. 14, 1982, 96 Stat. 1446, provided that:

“(1) Subsection (d) of section 3103A [now 5303A] of title 38, United States Code, as added by subsection (a)(2), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 14, 1982].

“(2) For the purposes of paragraph (1) of this subsection, additional wages deemed to have been paid under section 229(a) of the Social Security Act (42 U.S.C. 429(a)) shall be considered to be a benefit that was received by a person on the date that such person was discharged or released from active duty (as defined in section 101(21) of title 38, United States Code).”

SCOPE OF EXCLUSION

Pub. L. 97-306, title IV, § 408(d), Oct. 14, 1982, 96 Stat. 1446, provided that: “Section 3103A [now 5303A] of title 38, United States Code, as amended by subsection (a), is the law with respect to the matters stated in such section and applies, in accordance with its terms, with respect to benefits under Federal law, regardless of the particular title of the United States Code or other law under which any such benefit is provided or the department, agency, or instrumentality which administers any such benefit.”

APPLICABILITY

Pub. L. 97-66, title VI, § 604(b), Oct. 17, 1981, 95 Stat. 1036, provided that: “Section 5303A [formerly 3103A] of title 38, United States Code, as added by subsection (a), shall not apply with respect to the receipt by any person of any benefit provided by or pursuant to law before the date of the enactment of this Act [Oct. 17, 1981]. Notwithstanding such section, a person who before such date has received a certificate of eligibility from the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] for benefits under chapter 37 of title 38, United States Code, is eligible for such benefits after such date.”

**§ 5304. Prohibition against duplication of benefits**

(a)(1) Except as provided in section 1414 of title 10 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, or initial award of naval pension granted after July 13, 1943, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person.

(2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.

(b)(1) Except as provided in paragraphs (2) and (3) of this subsection and in section 1521(i) of this title, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse, child, or parent on account of the death of any person, or receipt by any person of pension or compensation on account of such person's own service, shall not bar the payment of pension, compensation, or dependency

and indemnity compensation on account of the death or disability of any other person.

(2) Benefits other than insurance under laws administered by the Secretary may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

(3) Benefits other than insurance under laws administered by the Secretary may not be paid to any person by reason of the death of more than one person to whom such person was married; however, the person may elect one or more times to receive benefits by reason of the death of any one spouse.

(c) Pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, § 3104; Pub. L. 86-495, § 1, June 8, 1960, 74 Stat. 163; Pub. L. 88-664, § 9, Oct. 13, 1964, 78 Stat. 1096; Pub. L. 91-376, § 6, Aug. 12, 1970, 84 Stat. 790; Pub. L. 95-588, title III, § 304, Nov. 4, 1978, 92 Stat. 2507; Pub. L. 96-385, title V, § 503(a), Oct. 7, 1980, 94 Stat. 1534; Pub. L. 99-576, title VII, § 701(71), Oct. 28, 1986, 100 Stat. 3297; renumbered § 5304 and amended Pub. L. 102-40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §§ 4(a)(1), 5(c)(1), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 108-454, title III, § 308(a), Dec. 10, 2004, 118 Stat. 3614.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454 inserted “as provided in section 1414 of title 10 or” after “Except”.

1991—Pub. L. 102-40, § 402(b)(1), renumbered section 3104 of this title as this section.

Subsec. (a)(2). Pub. L. 102-83, § 5(c)(1), substituted “1521” and “1541” for “521” and “541”, respectively.

Pub. L. 102-40, § 402(d)(1), substituted “5305” for “3105” in two places.

Subsec. (b)(1). Pub. L. 102-83, § 5(c)(1), substituted “1521(i)” for “521(i)”.

Subsec. (b)(2), (3). Pub. L. 102-83, § 4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans' Administration”.

1986—Subsec. (a)(1). Pub. L. 99-576, § 701(71)(A), substituted “such person's” for “his”.

Subsec. (b)(1). Pub. L. 99-576, § 701(71)(B)(i), (ii), substituted “surviving spouse” for “widow” and “such person's” for “his”.

Subsec. (b)(3). Pub. L. 99-576, § 701(71)(B)(iii), substituted “such person” for “he or she”.

Subsec. (c). Pub. L. 99-576, § 701(71)(C), substituted “any person's” for “his”, “to such person” for “to any person”, and “such person” for “he”.

1980—Subsec. (a). Pub. L. 96-385 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95-588 inserted “of this subsection and in section 521(i) of this title” after “(2) and (3)”.

1970—Subsec. (b)(1), (3). Pub. L. 91-376 inserted reference to par. (3) in par. (1) and added par. (3).

1964—Subsec. (a). Pub. L. 88-664 inserted “or concurrently to any person based on the service of any other person” after “own service”.

1960—Subsec. (b)(2). Pub. L. 86-495 substituted provisions prohibiting the payment or furnishing of benefits other than insurance to or on account of any child by reason of the death of more than one parent in the same parental line, and permitting the child to elect one or more times to receive benefits by reason of the death of any one of such parents, for provisions which

prohibited the payment of dependency and indemnity compensation to or on account of a child by reason of the death of another parent where the child receives or there is paid by the Veterans' Administration on account of a child dependency and indemnity compensation, or death compensation, by reason of the death of a parent.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-385 effective Oct. 1, 1980, see section 601(b) of Pub. L. 96-385, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-588 effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-376 effective Jan. 1, 1971, see section 9 of Pub. L. 91-376, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-664 effective Jan. 1, 1965, see section 11 of Pub. L. 88-664, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-495, § 2, June 8, 1960, 74 Stat. 163, provided that: "The amendment made by this Act [amending this section] shall apply only to cases where the death of a parent occurs after the date of enactment of this Act [June 8, 1960]."

**§ 5305. Waiver of retired pay**

Except as provided in section 1414 of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of such person's retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, § 3105; Pub. L. 91-621, § 6(a)(3), Dec. 31, 1970, 84 Stat. 1864; Pub. L. 99-576, title VII, § 701(72), Oct. 28, 1986, 100 Stat. 3297; renumbered § 5305, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(1), (2)(A)(viii), Aug. 6, 1991, 105 Stat. 403; Pub. L. 108-454, title III, § 308(b), Dec. 10, 2004, 118 Stat. 3614.)

AMENDMENTS

2004—Pub. L. 108-454 substituted "Except as provided in section 1414 of title 10, any" for "Any" in first sentence.

1991—Pub. L. 102-40 renumbered section 3105 of this title as this section.

Pub. L. 102-83, § 4(a)(2)(A)(viii), substituted "Secretary" for "Veterans' Administration".

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

1986—Pub. L. 99-576 substituted "such person" for "he" and "such person's" for "his".

1970—Pub. L. 91-621 substituted "National Oceanic and Atmospheric Administration" for "Coast and Geodetic Survey".

**§ 5306. Renunciation of right to benefits**

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Secretary may renounce the right thereto. The application renouncing the right shall be in writing over the person's signature. Upon the filing of such an application, payment of such benefits and the right thereto shall be terminated, and such person shall be denied any and all rights thereto from such filing.

(b) Renunciation of rights shall not preclude any person from filing a new application for pension, compensation, or dependency and indemnity compensation at a later date, but such new application shall be treated as an original application, and no payments shall be made for any period before the date such new application is filed.

(c) Notwithstanding subsection (b), if a new application for pension under chapter 15 of this title or for dependency and indemnity compensation for parents under section 1315 of this title is filed within one year after renunciation of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renunciation had not occurred.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1231, § 3106; Pub. L. 99-576, title VII, § 701(73), Oct. 28, 1986, 100 Stat. 3297; renumbered § 5306, Pub. L. 102-40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, § 4(a)(1), Aug. 6, 1991, 105 Stat. 403; Pub. L. 103-446, title V, § 503, Nov. 2, 1994, 108 Stat. 4663.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-446 added subsec. (c).

1991—Pub. L. 102-40 renumbered section 3106 of this title as this section.

Subsec. (a). Pub. L. 102-83 substituted "administered by the Secretary" for "administered by the Veterans' Administration".

1986—Subsec. (a). Pub. L. 99-576 substituted "the" for "his" before "right" in first sentence.

**§ 5307. Apportionment of benefits**

(a) All or any part of the compensation, pension, or emergency officers' retirement pay payable on account of any veteran may—

(1) if the veteran is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof, be apportioned on behalf of the veteran's spouse, children, or dependent parents; and

(2) if the veteran is not living with the veteran's spouse, or if the veteran's children are not in the custody of the veteran, be apportioned as may be prescribed by the Secretary.

(b) Where any of the children of a deceased veteran are not in the custody of the veteran's