

Pub. L. 102-83, §5(c)(1), substituted "1134" for "334" and "1115" for "315".

1984—Pub. L. 98-543 substituted "30 percent" for "50 per centum".

1972—Pub. L. 92-328 substituted provisions that the veteran be entitled to additional monthly compensation for dependents as provided in section 315 of this title, for provisions that the veteran be entitled to additional monthly compensation for dependents equal to 80% of the additional compensation for dependents provided in section 315 of this title, and subject to the limitations thereof, and adjusted upward or downward to the nearest dollar.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-543, title I, §112(b), Oct. 24, 1984, 98 Stat. 2740, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of October 1, 1978."

#### EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-328 effective July 1, 1973, see section 301(b) of Pub. L. 92-328, set out as a note under section 1134 of this title.

### [§ 1136. Vacant]

#### CODIFICATION

Prior to renumbering of sections 301 to 363 of this chapter as sections 1101 to 1163 by Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406, section 336 of this chapter, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1123, which set forth the conditions under which wartime rates were payable to any veteran otherwise entitled to compensation under the provisions of this subchapter, was repealed by Pub. L. 92-328, title I, §108(c), title III, §301(b), June 30, 1972, 86 Stat. 396, 398, effective July 1, 1973.

### § 1137. Wartime presumptions for certain veterans

For the purposes of this subchapter and subchapter V of this chapter and notwithstanding the provisions of sections 1132 and 1133 of this subchapter, the provisions of sections 1111, 1112, and 1113 of this chapter shall be applicable in the case of any veteran who served in the active military, naval, or air service after December 31, 1946.

(Added Pub. L. 89-358, §7(a), Mar. 3, 1966, 80 Stat. 27, §337; amended Pub. L. 93-295, title II, §205, May 31, 1974, 88 Stat. 183; renumbered §1137 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

#### AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 337 of this title as this section.

Pub. L. 102-83, §5(c)(1), substituted "1132 and 1133" for "332 and 333" and "1111, 1112, and 1113" for "311, 312, and 313".

1974—Pub. L. 93-295 substituted "December 31, 1946" for "January 31, 1955".

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-295 effective May 1, 1974, see section 401 of Pub. L. 93-295, set out as a note under section 1114 of this title.

## SUBCHAPTER V—PEACETIME DEATH COMPENSATION

### § 1141. Basic entitlement

The surviving spouse, child or children, and dependent parent or parents of any veteran who

died before January 1, 1957, as the result of injury or disease incurred in or aggravated by active military, naval, or air service, in line of duty, during other than a period of war, shall be entitled to receive compensation as hereinafter provided in this subchapter.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1123, §341; Pub. L. 92-197, §6, Dec. 15, 1971, 85 Stat. 662; Pub. L. 94-433, title IV, §404(18), Sept. 30, 1976, 90 Stat. 1379; renumbered §1141, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

#### AMENDMENTS

1991—Pub. L. 102-83 renumbered section 341 of this title as this section.

1976—Pub. L. 94-433 substituted "spouse" for "widow".

1971—Pub. L. 92-197 struck out eligibility clause when the veteran died after April 30, 1957, under circumstances described in section 417(a) of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-197 effective Jan. 1, 1972, see section 10 of Pub. L. 92-197, set out as a note under section 1311 of this title.

### § 1142. Rates of peacetime death compensation

For the purposes of section 1141 of this title, the monthly rates of death compensation payable shall be those specified in section 1122 of this title.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, §342; Pub. L. 93-295, title II, §206(a), May 31, 1974, 88 Stat. 183; renumbered §1142 and amended Pub. L. 102-83, §5(a), (c)(1), Aug. 6, 1991, 105 Stat. 406.)

#### AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 342 of this title as this section.

Pub. L. 102-83, §5(c)(1), substituted "1141" for "341" and "1122" for "322".

1974—Pub. L. 93-295 substituted "those specified in section 322 of this title" for "equal to 80 per centum of the rates prescribed by section 322 of this title, adjusted upward or downward to the nearest dollar, counting fifty cents and over as a whole dollar".

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-295 effective May 1, 1974, see section 401 of Pub. L. 93-295, set out as a note under section 1114 of this title.

### [§ 1143. Vacant]

#### CODIFICATION

Prior to renumbering of sections 301 to 363 of this chapter as sections 1101 to 1163 by Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406, section 343 of this chapter, Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, which prescribed conditions under which wartime rates of compensation were payable, was repealed by Pub. L. 93-295, title II, §206(b), title IV, §401, May 31, 1974, 88 Stat. 183, 184, effective May 1, 1974.

## SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

### § 1151. Benefits for persons disabled by treatment or vocational rehabilitation

(a) Compensation under this chapter and dependency and indemnity compensation under

chapter 13 of this title shall be awarded for a qualifying additional disability or a qualifying death of a veteran in the same manner as if such additional disability or death were service-connected. For purposes of this section, a disability or death is a qualifying additional disability or qualifying death if the disability or death was not the result of the veteran's willful misconduct and—

(1) the disability or death was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by the Secretary, either by a Department employee or in a Department facility as defined in section 1701(3)(A) of this title, and the proximate cause of the disability or death was—

(A) carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination; or

(B) an event not reasonably foreseeable; or

(2) the disability or death was proximately caused (A) by the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose under section 3115 of this title) as part of an approved rehabilitation program under chapter 31 of this title, or (B) by participation in a program (known as a "compensated work therapy program") under section 1718 of this title.

(b)(1) Where an individual is, on or after December 1, 1962, awarded a judgment against the United States in a civil action brought pursuant to section 1346(b) of title 28 or, on or after December 1, 1962, enters into a settlement or compromise under section 2672 or 2677 of title 28 by reason of a disability or death treated pursuant to this section as if it were service-connected, then (except as otherwise provided in paragraph (2)) no benefits shall be paid to such individual for any month beginning after the date such judgment, settlement, or compromise on account of such disability or death becomes final until the aggregate amount of benefits which would be paid but for this subsection equals the total amount included in such judgment, settlement, or compromise.

(2) In the case of a judgment, settlement, or compromise covered by paragraph (1) that becomes final on or after the date of the enactment of this paragraph and that includes an amount that is specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of this title (hereinafter in this paragraph referred to as the "offset amount"), if such judgment, settlement, or compromise becomes final before the date of the award of benefits under chapter 21 or 39 for the purpose for which the offset amount was specifically designated—

(A) the amount of such award shall be reduced by the offset amount; and

(B) if the offset amount is greater than the amount of such award, the excess amount received pursuant to the judgment, settlement or compromise, shall be offset against benefits otherwise payable under this chapter.

(c) A qualifying additional disability under this section shall be treated in the same manner as if it were a service-connected disability for purposes of the following provisions of this title:

(1) Chapter 21, relating to specially adapted housing.

(2) Chapter 39, relating to automobiles and adaptive equipment.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, §351; Pub. L. 87-825, §3, Oct. 15, 1962, 76 Stat. 950; Pub. L. 91-24, §3, June 11, 1969, 83 Stat. 33; Pub. L. 94-433, title IV, §404(19), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98-223, title II, §213(1), Mar. 2, 1984, 98 Stat. 46; renumbered §1151 and amended Pub. L. 102-83, §§4(a)(1), 5(a), Aug. 6, 1991, 105 Stat. 403, 406; Pub. L. 104-204, title IV, §422(a), Sept. 26, 1996, 110 Stat. 2926; Pub. L. 106-419, title III, §303, Nov. 1, 2000, 114 Stat. 1853; Pub. L. 108-454, title III, §304(a),(c), Dec. 10, 2004, 118 Stat. 3611.)

#### REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 108-454, which was approved Dec. 10, 2004.

#### AMENDMENTS

2004—Subsec. (b). Pub. L. 108-454, §304(c), designated existing provision as par. (1), inserted "(except as otherwise provided in paragraph (2))" after "service-connected, then", and added par. (2).

Subsec. (c). Pub. L. 108-454, §304(a), added subsec. (c). 2000—Subsec. (a)(2). Pub. L. 106-419 inserted "(A)" after "proximately caused" and added cl. (B).

1996—Subsec. (a). Pub. L. 104-204, §422(a)(1), added subsec. (a) and struck out former first sentence of section which read as follows: "Where any veteran shall have suffered an injury, or an aggravation of an injury, as the result of hospitalization, medical or surgical treatment, or the pursuit of a course of vocational rehabilitation under chapter 31 of this title, awarded under any of the laws administered by the Secretary, or as a result of having submitted to an examination under any such law, and not the result of such veteran's own willful misconduct, and such injury or aggravation results in additional disability to or the death of such veteran, disability or death compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded in the same manner as if such disability, aggravation, or death were service-connected."

Subsec. (b). Pub. L. 104-204, §422(a)(2), designated second sentence of section as subsec. (b), struck out ", aggravation," after "disability" in two places, and substituted "this subsection equals the total amount" for "this sentence equals the total amount".

1991—Pub. L. 102-83, §5(a), renumbered section 351 of this title as this section.

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

1984—Pub. L. 98-223 substituted "title 28" for "title 28, United States Code," in two places.

1976—Pub. L. 94-433 struck out "him" before "under any of the laws" and substituted "such veteran's" for "his" in first sentence.

1969—Pub. L. 91-24 substituted " , on or after December 1, 1962," for "hereafter" wherever appearing.

1962—Pub. L. 87-825 provided that where an individual is awarded a judgment under section 1346(b) of title 28, enters a settlement or compromise under section 2672 or 2677 of such title by reason of a disability, aggravation, or death treated pursuant to this section as if service-connected, then no benefits shall be paid such individual for any month beginning after such judgment, settlement or compromise becomes final until the aggregate amount of benefits equals the total

amount included in such judgment, settlement, or compromise, and struck out provisions which required that no benefits were to be awarded unless application was made therefor within two years after an injury or aggravation was suffered, or a death occurred.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-454, title III, §304(b), Dec. 10, 2004, 118 Stat. 3611, provided that: "Subsection (c) of section 1151 of title 38, United States Code, as added by subsection (a), shall apply with respect to eligibility for benefits and services provided by the Secretary of Veterans Affairs on or after the date of the enactment of this Act [Dec. 10, 2004]."

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-204, title IV, §422(b), (c), Sept. 26, 1996, 110 Stat. 2927, provided that:

"(b)(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1996.

"(2) Section 1151 of title 38, United States Code (as amended by subsection (a)), shall govern all administrative and judicial determinations of eligibility for benefits under such section that are made with respect to claims filed on or after the effective date set forth in paragraph (1) [Oct. 1, 1996], including those based on original applications and applications seeking to reopen, revise, reconsider, or otherwise readjudicate on any basis claims for benefits under such section 1151 or any provision of law that is a predecessor of such section.

"(c) Notwithstanding [sic] subsection (b)(1), section 421(d) [set out as a note under section 1801 of this title], or any other provision of this Act [see Tables for classification], section 421 [enacting sections 1801 to 1806 of this title, amending section 5312 of this title, and enacting provisions set out as notes under section 1801 of this title] and this section [amending this section] shall not take effect until October 1, 1997, unless legislation other than this Act is enacted to provide for an earlier effective date."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-433 effective Oct. 1, 1976, see section 406 of Pub. L. 94-433, set out as a note under section 1101 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-825 effective first day of second calendar month which begins after Oct. 15, 1962, see section 7 of Pub. L. 87-825, set out as a note under section 110 of this title.

### § 1152. Persons heretofore having a compensable status

The death and disability benefits of this chapter shall, notwithstanding the service requirements thereof, be granted to persons heretofore recognized by law as having a compensable status, including persons whose claims are based on war or peacetime service rendered before April 21, 1898.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, §352; renumbered §1152, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

#### AMENDMENTS

1991—Pub. L. 102-83 renumbered section 352 of this title as this section.

### § 1153. Aggravation

A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase

in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, §353; renumbered §1153, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406.)

#### AMENDMENTS

1991—Pub. L. 102-83 renumbered section 353 of this title as this section.

### § 1154. Consideration to be accorded time, place, and circumstances of service

(a) The Secretary shall include in the regulations pertaining to service-connection of disabilities (1) additional provisions in effect requiring that in each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service as shown by such veteran's service record, the official history of each organization in which such veteran served, such veteran's medical records, and all pertinent medical and lay evidence, and (2) the provisions required by section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542; 98 Stat. 2727).

(b) In the case of any veteran who engaged in combat with the enemy in active service with a military, naval, or air organization of the United States during a period of war, campaign, or expedition, the Secretary shall accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end, shall resolve every reasonable doubt in favor of the veteran. Service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each case shall be recorded in full.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1124, §354; Pub. L. 94-433, title IV, §404(20), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98-542, §4, Oct. 24, 1984, 98 Stat. 2727; Pub. L. 102-54, §14(b)(1), June 13, 1991, 105 Stat. 282; renumbered §1154 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

#### REFERENCES IN TEXT

Section 5 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, referred to in subsec. (a), is set out below.

#### AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 354 of this title as this section.

Pub. L. 102-54, §14(b)(1)(A), inserted a comma after "place" in section catchline.

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

Pub. L. 102-54, §14(b)(1)(B), inserted before period at end "(Public Law 98-542; 98 Stat. 2727)".

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