

for any pay period ending after January 21, 1981, and before the establishment of such fund.

“(C) Interest on amounts so allotted with respect to any such pay period shall be calculated as if the allotment had occurred at the end of such pay period.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

RECALCULATION OF PREVIOUS PAYMENTS

Pub. L. 110-181, div. A, title VI, §675(b), Jan. 28, 2008, 122 Stat. 187, provided that: “In the case of any payment of back pay made to or for a person under section 667 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Pub. L. 106-398, §1 [[div. A], title VI, §667], set out below] before the date of the enactment of this Act [Jan. 28, 2008], the Secretary of the Navy shall—

“(1) recalculate the amount of back pay to which the person is entitled by reason of the amendment made by subsection (a) [amending Pub. L. 106-398, §1 [[div. A], title VI, §667], set out below]; and

“(2) if the amount of back pay, as so recalculated, exceeds the amount of back pay so paid, pay the person, or the surviving spouse of the person, an amount equal to the excess.”

BACK PAY FOR MEMBERS OF THE NAVY AND MARINE CORPS SELECTED FOR PROMOTION WHILE INTERNED AS PRISONERS OF WAR DURING WORLD WAR II

Pub. L. 106-398, §1 [[div. A], title VI, §667], Oct. 30, 2000, 114 Stat. 1654, 1654A-169, as amended by Pub. L. 110-181, div. A, title VI, §675(a), Jan. 28, 2008, 122 Stat. 186, provided that:

“(a) ENTITLEMENT OF FORMER PRISONERS OF WAR.—Upon receipt of a claim made in accordance with this section, the Secretary of the Navy shall pay, from any appropriation currently available to the Secretary, back pay to any person who, by reason of being interned as a prisoner of war while serving as a member of the Navy or the Marine Corps during World War II, was not available to accept a promotion for which the person had been selected.

“(b) PAYMENT TO SURVIVING SPOUSE OF DECEASED FORMER MEMBER.—In the case of a person described in subsection (a) who is deceased, the back pay for that person under this section shall be paid to the living surviving spouse of that person, if any. If there is no living surviving spouse, no claim may be paid under this section with respect to that person.

“(c) AMOUNT OF BACK PAY.—(1) The amount of back pay payable to or for a person described in subsection (a) is the amount equal to the difference between—

“(A) the total amount of basic pay that would have been paid to that person for service in the Navy or the Marine Corps for the back-pay computation period if the person had been promoted to the grade to which selected to be promoted; and

“(B) the total amount of basic pay that was actually paid to or for that person for such service for the back-pay computation period.

“(2) For purposes of paragraph (1), the back-pay computation period for a person covered by subsection (a) is the period—

“(A) beginning on the date (as determined by the Secretary of the Navy) as of when that person’s promotion would have been effective for pay purposes but for the person’s internment as a prisoner of war; and

“(B) ending on the earliest of—

“(i) the date of the person’s discharge or release from active duty;

“(ii) the date on which the person’s promotion to that grade in fact became effective for pay purposes; and

“(iii) the end of World War II.

“(3) The amount determined for a person under paragraph (1) shall be increased to reflect increases in cost of living since the basic pay referred to in paragraph (1)(B) was paid to or for that person, calculated on the basis of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

“(d) TIME LIMITATIONS.—(1) To be eligible for a payment under this section, a claimant must file a claim for such payment with the Secretary of the Navy within two years after the effective date of the regulations prescribed to carry out this section.

“(2) Not later than 18 months after receiving a claim for payment under this section, the Secretary shall determine the eligibility of the claimant for payment of the claim. Subject to subsection (f), if the Secretary determines that the claimant is eligible for the payment, the Secretary shall promptly pay the claim.

“(e) REGULATIONS.—Not later than six months after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of the Navy shall prescribe regulations to carry out this section. Such regulations shall include procedures by which persons may submit claims for payment under this section.

“(f) LIMITATION ON DISBURSEMENT.—(1) Notwithstanding any power of attorney, assignment of interest, contract, or other agreement, the actual disbursement of a payment of back pay under this section may be made only to a person who is eligible for the payment under subsection (a) or (b).

“(2) In the case of a claim approved for payment but not disbursed as a result of paragraph (1), the Secretary shall hold the funds in trust for the person in an interest bearing account until such time as the person makes an election under such paragraph.

“(g) ATTORNEY FEES.—Notwithstanding any contract, the representative of a person may not receive, for services rendered in connection with the claim of, or with respect to, a person under this section, more than 10 percent of the amount of a payment made under this section on that claim.

“(h) OUTREACH.—The Secretary of the Navy shall take such actions as are necessary to ensure that the benefits and eligibility for benefits under this section are widely publicized by means designed to provide actual notice of the availability of the benefits in a timely manner to the maximum number of eligible persons practicable.

“(i) DEFINITION.—In this section, the term ‘World War II’ has the meaning given that term in section 101(8) of title 38, United States Code.”

PAYMENT TO INDIVIDUALS HELD IN CAPTIVE STATUS BETWEEN NOVEMBER 4, 1979, AND JANUARY 21, 1981

For payment for individuals in the uniformed services referred to in subsec. (c) of this section held in captive status between Nov. 4, 1979, and Jan. 21, 1981, see section 802 of Pub. L. 99-399, set out as a note under section 5569 of Title 5, Government Organization and Employees.

CHAPTER 11—PAYMENTS TO MENTALLY INCOMPETENT PERSONS

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| Sec. 601. | Applicability. |
| 602. | Payments: designation of person to receive amounts due. |
| 603. | Regulations. |
| 604. | Determination of Secretary final. |

AMENDMENTS

1990—Pub. L. 101-510, div. A, title XIV, §1484(f)(1), Nov. 5, 1990, 104 Stat. 1717, revised chapter heading so as to appear in all capital letters.

§ 601. Applicability

This chapter applies to—

- (1) members of a uniformed service who are on active duty (other than for training) or who are on a retired list of that service; and
- (2) members of the Fleet Reserve or Fleet Marine Corps Reserve.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 483.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 601 | 37:351. | June 21, 1950, ch. 342, §1, 64 Stat. 249. |

The words "on active duty (other than for training)" are substituted for the words "on the active . . . list" to conform to longstanding administrative construction, and because there is no "active list" in the case of many of the uniformed services named, but only for certain regular component of those services, e.g., the "Regular Army" and the "Regular Air Force". The words "a retired list of that service" are substituted for the words "retired list", since there is more than one retired list for many of the services named. (See sections 1376, 3966, and 8966 of title 10, for example.) The words "members of the Reserve components of the respective services entitled to Federal pay either on the active or any retired list of said services" are omitted as covered by clause (1), since members of the reserve components are members of the uniformed services concerned. The word "transferred" is omitted as surplusage.

§ 602. Payments: designation of person to receive amounts due

(a) Active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, that are otherwise payable to a member to whom this chapter applies and who is mentally incapable of managing his affairs, may be paid for that member's use or benefit to—

- (1) a legal committee, guardian, or other representative that has been appointed by a court of competent jurisdiction;
- (2) an individual to whom the member has granted authority to manage such funds pursuant to a valid and legally executed durable power of attorney; or
- (3) any person designated by the Secretary concerned, or by any officer to whom he delegates his authority under this section, without the appointment in judicial proceedings of a committee, guardian, or other legal representative.

(b) An individual may not be designated under subsection (a)(3) to receive payments unless a board consisting of at least three qualified medical officers or physicians, one of whom is specially qualified in the treatment of mental disorders, determines that the member is mentally incapable of managing the member's affairs. Any such board shall be appointed from available medical officers or physicians under his jurisdiction by the head of whichever of the following is providing medical treatment for the member, or by a person designated by that head—

- (1) Department of the Army;
- (2) Department of the Navy;
- (3) Department of the Air Force;
- (4) Department of Health and Human Services; or

- (5) Department of Veterans Affairs.

If the hospitalization or medical care of the member is not provided by the United States, the board shall be appointed by the Secretary of the department having jurisdiction of the member.

(c) A payment made to a person who is authorized to receive payments under this section discharges the obligation of the United States as to the amount paid.

(d) A person serving in a legal, medical, fiduciary, or other capacity, may not demand or accept a fee, commission, or other charge for any service performed under this chapter, unless a court of competent jurisdiction orders payment of such fee, commission, or other charge.

(e) A person who is designated under subsection (a)(3) to receive payments under this section shall furnish satisfactory assurance that the amounts received by him will be applied to the use and benefit of the incompetent member, and, where the payments may reasonably be expected to be more than \$25,000, shall provide a suitable bond to be paid for out of amounts due the incompetent member.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 483; Pub. L. 96-513, title V, §516(17), Dec. 12, 1980, 94 Stat. 2939; Pub. L. 101-189, div. A, title XVI, §1621(b)(1), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 114-328, div. A, title VI, §645, Dec. 23, 2016, 130 Stat. 2167.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---|---|
| 602(a) | 37:352 (1st sentence, less 31 words before provisos and less provisos). | June 21, 1950, ch. 342, §§2, 3 (less 1st 28 words), 64 Stat. 249; Aug. 7, 1959, Pub. L. 86-145, §1, 73 Stat. 297. |
| 602(b) | 37:352 (last proviso of 1st sentence, 2d sentence, and last sentence). | |
| 602(c) | 37:352 (31 words before provisos of 1st sentence). | |
| 602(d) | 37:352 (1st proviso of 1st sentence). | |
| 602(e) | 37:352 (2d proviso of 1st sentence). | |
| 602(f) | 37:353 (less 1st 28 words). | |

In subsection (a), the words "or persons" and "or officers" are omitted, since, under section 1 of title 1, "words importing the singular include and apply to several persons, parties, or things". The words "to whom he delegates his authority under this section" are substituted for the words "as the respective Secretaries may designate for such purposes" to obviate confusion between persons "designated to receive payments and those who perform the Secretary's functions under the section. The words "the necessity of" are omitted as surplusage.

In subsection (c), the words "or persons" are omitted for the reasons given in the preceding paragraph. The words "discharges the obligation" are substituted for the words "shall constitute a complete discharge".

In subsection (d), the words "under the authority of" are omitted as surplusage.

In subsection (e), the words "have been" and "including a requirement" are omitted as surplusage. The words "or persons" are omitted for the reason stated in the explanation under subsection (a), above.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, §645(1), struck out "in the opinion of a board of medical officers or physicians," after "and who" and substituted "use or benefit to—