

RETROACTIVE BENEFITS PROHIBITED

For provisions relating to prohibition of retroactive benefits by reason of amendments to this section by Pub. L. 108-183, see section 101(d) of Pub. L. 108-183, set out as a note under section 103 of this title.

DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

For increases in rates and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation, see notes set out under section 1114 of this title.

PAYMENT FOR IMPLEMENTATION OF REVISIONS

Pub. L. 102-568, title I, §102(d), Oct. 29, 1992, 106 Stat. 4322, provided that: "The costs of implementing, during fiscal years 1993 and 1994, any revisions in the payment of dependency and indemnity compensation to surviving spouses under section 1311 of title 38, United States Code, that result from the amendments made by subsections (a) and (b) [amending this section] shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension."

§ 1312. Benefits in certain cases of in-service or service-connected deaths

(a) In the case of any veteran—

(1) who dies after December 31, 1956, and is not a fully and currently insured individual (as defined in section 214 of the Social Security Act (42 U.S.C. 414)) at the time of such veteran's death; and

(2) whose death occurs—

(A) while on active duty, active duty for training, or inactive duty training; or

(B) as the result of a service-connected disability incurred after September 15, 1940; and

(3) who leaves one or more survivors who are not entitled for any month to monthly benefits under section 202 of the Social Security Act (42 U.S.C. 402) on the basis of such veteran's wages and self-employment income but who would, upon application therefor, be entitled to such benefits if such veteran had been fully and currently insured at the time of such veteran's death;

the Secretary shall pay for such month benefits under this section to each such survivor in an amount equal to the amount of the benefits which would have been paid for such month to such survivor under title II of the Social Security Act (42 U.S.C. 401 et seq.), if such veteran had been both fully and currently insured at the time of such veteran's death and if such survivor had filed application therefor on the same date on which application for benefits under this section is filed with the Secretary.

(b) In any case where the amount of dependency and indemnity compensation payable under this chapter to a surviving spouse who has children is less than the amount of pension which would be payable to (1) such surviving spouse, or (2) such children if the surviving spouse were not entitled, under chapter 15 of this title had the death occurred under circumstances authorizing payment of death pension, the Secretary shall pay dependency and indemnity compensation to such surviving spouse in an amount equal to such amount of pension.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1128, §412; Pub. L. 87-268, §1(a), Sept. 21, 1961, 75 Stat. 566;

Pub. L. 89-466, June 22, 1966, 80 Stat. 217; Pub. L. 94-433, title IV, §405(9), Sept. 30, 1976, 90 Stat. 1379; Pub. L. 98-223, title II, §213(2), Mar. 2, 1984, 98 Stat. 46; Pub. L. 102-54, §14(b)(3), June 13, 1991, 105 Stat. 283; renumbered §1312 and amended Pub. L. 102-83, §§4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404-406.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 214 and 202 of the Social Security Act are classified to sections 414 and 402 of Title 42, respectively. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1991—Pub. L. 102-83, §5(a), renumbered section 412 of this title as this section.

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

Pub. L. 102-54 substituted "401" for "201" in concluding provisions.

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

1984—Subsec. (a). Pub. L. 98-223, §213(2), substituted "section 214 of the Social Security Act (42 U.S.C. 414)" for "section 414 of title 42" in par. (1), "section 202 of the Social Security Act (42 U.S.C. 402)" for "section 402 of title 42" in par. (3), and "title II of the Social Security Act (42 U.S.C. 201 et seq.)" for "subchapter II of chapter 7 of title 42" in provision following par. (3).

1976—Subsec. (a). Pub. L. 94-433 substituted "such veteran's" for "his" in cls. (1) and (3) and in text following cl. (3) and "such veteran" for "he" in cl. (3).

Subsec. (b). Pub. L. 94-433 substituted "surviving spouse" for "widow" wherever appearing.

1966—Pub. L. 89-466 inserted "to a widow who has children", "to (1) such widow, or (2) such children if the widow were not entitled", and "such widow".

1961—Pub. L. 87-268 designated existing provisions as subsec. (a) and added subsec. (b).

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 1961 AMENDMENT

Pub. L. 87-268, §3, Sept. 21, 1961, 75 Stat. 566, provided that: "The amendments made by this Act [amending this section and sections 107, 411 [now 1311], 415 [now 1315], 422 [now 1322], and 503 [now 1503] of this title and enacting provisions set out as notes under this section] shall take effect as of the first day of the first calendar month which begins after the date of its enactment [Sept. 21, 1961]."

FILING OF APPLICATION FOR BENEFITS

Pub. L. 87-268, §2, Sept. 21, 1961, 75 Stat. 566, provided that the increased pension benefits authorized by Pub. L. 87-268 were to be payable from the effective date of Pub. L. 87-268 to anyone receiving dependency and indemnity compensation on such date only if the application for such increased benefits were filed with the Veterans' Administration within one year from such date and evidence of entitlement were of record or received within one year from the date of request therefor.

§ 1313. Dependency and indemnity compensation to children

(a) Whenever there is no surviving spouse of a deceased veteran entitled to dependency and in-