

forfeited under subsection (a) to the dependents of the person forfeiting such benefits. No dependent of any person shall receive benefits by reason of this subsection in excess of the amount to which the dependent would be entitled if such person were dead.

(c) In the case of any forfeiture under this section there shall be no authority after September 1, 1959 (1) to make an apportionment award pursuant to subsection (b) or (2) to make an award to any person of gratuitous benefits based on any period of military, naval, or air service commencing before the date of commission of the offense.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1240, §3504; Pub. L. 86-222, §2, Sept. 1, 1959, 73 Stat. 452; Pub. L. 91-24, §13(b), June 11, 1969, 83 Stat. 34; Pub. L. 97-295, §4(78), Oct. 12, 1982, 96 Stat. 1311; Pub. L. 99-576, title VII, §701(84), Oct. 28, 1986, 100 Stat. 3298; renumbered §6104, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-83, §4(a)(1), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405.)

AMENDMENTS

1991—Pub. L. 102-40 renumbered section 3504 of this title as this section.

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

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

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” and “Secretary’s” for “Administrator’s”.

1986—Subsec. (b). Pub. L. 99-576 substituted “the Administrator’s” for “his” and “the dependent” for “he”.

1982—Subsec. (a). Pub. L. 97-295 inserted “to” before “be guilty”.

1969—Subsec. (c). Pub. L. 91-24 substituted “September 1, 1959” for “the date of enactment of this subsection”.

1959—Subsec. (c). Pub. L. 86-222 added subsec. (c).

§ 6105. Forfeiture for subversive activities

(a) Any individual who is convicted after September 1, 1959, of any offense listed in subsection (b) of this section shall, from and after the date of commission of such offense, have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Secretary based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such individual. After receipt of notice of the return of an indictment for such an offense the Secretary shall suspend payment of such gratuitous benefits pending disposition of the criminal proceedings. If any individual whose right to benefits has been terminated pursuant to this section is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon.

(b) The offenses referred to in subsection (a) of this section are those offenses for which punishment is prescribed in—

(1) sections 894, 904, and 906 of title 10 (articles 94, 104, and 106 of the Uniform Code of Military Justice);

(2) sections 175, 229, 792, 793, 794, 798, 831, 1091, 2332a, 2332b, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and chapter 105 of title 18;

(3) sections 222, 223, 224, 225, and 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2272, 2273, 2274, 2275, and 2276); and

(4) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(c) The Secretary of Defense or the Secretary of Homeland Security, as appropriate, shall notify the Secretary in each case in which an individual is convicted of an offense listed in paragraph (1) of subsection (b). The Attorney General shall notify the Secretary in each case in which an individual is indicted or convicted of an offense listed in paragraph (2), (3), or (4) of subsection (b).

(Added Pub. L. 86-222, §3(a), Sept. 1, 1959, 73 Stat. 453, §3505; amended Pub. L. 92-128, §2(c), Sept. 25, 1971, 85 Stat. 348; Pub. L. 93-43, §8, June 18, 1973, 87 Stat. 88; Pub. L. 97-295, §4(79), Oct. 12, 1982, 96 Stat. 1311; renumbered §6105, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §14(d)(9), June 13, 1991, 105 Stat. 287; Pub. L. 102-83, §4(a)(1), (2)(A)(xiv), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 103-446, title XII, §1201(e)(19), Nov. 2, 1994, 108 Stat. 4686; Pub. L. 107-296, title XVII, §1704(d), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 108-183, title VII, §705(a), Dec. 16, 2003, 117 Stat. 2672.)

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-183 inserted “175, 229,” after “sections” and “831, 1091, 2332a, 2332b,” after “798”.

2002—Subsec. (c). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

1994—Subsec. (c). Pub. L. 103-446 substituted “paragraph (2), (3), or (4) of subsection (b)” for “clauses (2), (3), or (4) of subsection (b) of this section” and “paragraph (1) of subsection (b)” for “clause (1) of that subsection” and transposed the first and second sentences.

1991—Pub. L. 102-40 renumbered section 3505 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(a)(2)(A)(xiv), substituted “Secretary” for “Veterans’ Administration” in second sentence.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration” in first sentence.

Subsec. (c). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-54 amended subsec. (c) as in effect immediately before the enactment of Pub. L. 102-40 by substituting “clauses (2),” for “clauses (1),”, “Secretary of Transportation, as” for “Secretary of the Treasury, as may be”, and “clause (1) of that subsection” for “clause (2) of subsection (b) of this section”.

1982—Subsec. (a). Pub. L. 97-295, §4(79)(A), substituted “September 1, 1959,” for “the date of enactment of this section”.

Subsec. (b). Pub. L. 97-295, §4(79)(B), substituted pars. (1), (2), and (3) for cls. (2), (1), and (3), respectively, and inserted citations to the United States Code.

1973—Subsec. (a). Pub. L. 93-43 inserted “(including the right to burial in a national cemetery)” after “gratuitous benefits” in first sentence.

1971—Subsec. (b)(4). Pub. L. 92-128 substituted “in section 4 of the Internal Security Act of 1950” for “in the following sections of the Internal Security Act of 1950; sections 4, 112, and 113”.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-183, title VII, §705(b), Dec. 16, 2003, 117 Stat. 2672, provided that: “The amendments made by subsection (a) [amending this section] shall apply to claims filed after the date of the enactment of this Act [Dec. 16, 2003].”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-43 effective June 18, 1973, see section 10(a) of Pub. L. 93-43, set out as an Effective Date note under section 2400 of this title.

§ 6106. Misuse of benefits by fiduciaries

(a) **FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.**—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

(b) **MISUSE OF BENEFITS DEFINED.**—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

(c) **REGULATIONS.**—The Secretary may prescribe by regulation the meaning of the term "use and benefit" for purposes of this section.

(Added Pub. L. 108-454, title V, §503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

EFFECTIVE DATE

Section applicable with respect to any determinations by the Secretary of Veterans Affairs made after Dec. 10, 2004, of misuse of funds by a fiduciary, see section 507(b)(2) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

§ 6107. Reissuance of benefits

(a) **NEGLIGENT FAILURE BY SECRETARY.**—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

(A) A case in which the Secretary failed to review a fiduciary's accounting within 60 days of the date on which that accounting is scheduled for review.

(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

(C) In any other case in which actual negligence is shown.

(b) **REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.**—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

(2) Paragraph (1) applies to a fiduciary that—

(A) is not an individual; or

(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

(c) **LIMITATION ON TOTAL AMOUNT PAID.**—The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

(d) **RECOUPMENT OF AMOUNTS REISSUED.**—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.

(Added Pub. L. 108-454, title V, §503(a)(1), Dec. 10, 2004, 118 Stat. 3619.)

EFFECTIVE DATE

Section applicable with respect to any determinations by the Secretary of Veterans Affairs made after Dec. 10, 2004, of misuse of funds by a fiduciary, see section 507(b)(2) of Pub. L. 108-454, set out as an Effective Date of 2004 Amendment note under section 5312 of this title.

§ 6108. Authority for judicial orders of restitution

(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.