

REFERENCES IN TEXT

The Social Security Act, referred to in text, 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. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-454 inserted “and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title,” after “(d)(3) of such section.”.

1996—Subsec. (a). Pub. L. 104-204, § 421(c)(1), substituted “, the rate of increased pension” for “and the rate of increased pension” and inserted “and each rate of monthly allowance paid under section 1805 of this title,” after “on account of children.”.

Subsec. (c)(1). Pub. L. 104-204, § 421(c)(2), substituted “1542, and 1805” for “and 1542”.

1991—Pub. L. 102-40 renumbered section 3112 of this title as this section.

Subsec. (a). Pub. L. 102-83, § 5(c)(1), substituted “1521”, “1541”, and “1542” for “521”, “541”, and “542”, respectively, wherever appearing.

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

Subsec. (b)(1), (2)(A). Pub. L. 102-83, § 5(c)(1), substituted “1315” for “415”.

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

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

Subsec. (c)(1). Pub. L. 102-83, § 5(c)(1), substituted “1521”, “1541”, and “1542” for “521”, “541”, and “542”, respectively, and “1315” for “415”.

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

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

1982—Subsec. (a). Pub. L. 97-295, § 4(76)(A), (B), inserted “(42 U.S.C. 401 et seq.)” after first reference to “title II of the Social Security Act”, and inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”.

Subsec. (b)(1). Pub. L. 97-295, § 4(76)(A)–(C), inserted “(42 U.S.C. 401 et seq.)” after first reference to “title II of the Social Security Act”, inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”, and substituted “subsection (g), of section 415 of this title” for “subsection (h), of section 415 of such title”.

Subsec. (c)(1). Pub. L. 97-295, § 4(76)(B), (D), inserted “(42 U.S.C. 415(i)(2)(D))” after “section 215(i)(2)(D) of the Social Security Act”, and inserted “(42 U.S.C. 415(i))” after “section 215(i) of such Act”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-454, title V, § 507, Dec. 10, 2004, 118 Stat. 3622, provided that:

“(a) IN GENERAL.—Except as otherwise provided, this title [enacting sections 5506 to 5510 and 6106 to 6108 of this title and amending this section and sections 5502 and 6101 of this title] and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act [Dec. 10, 2004].

“(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section 505(a), shall take effect on the date of the enactment of this Act [Dec. 10, 2004].

“(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 503(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-204 effective Oct. 1, 1997, notwithstanding section 421(d) of Pub. L. 104-204, set

out as an Effective Date note under section 1801 of this title, unless legislation other than Pub. L. 104-204 is enacted providing for an earlier effective date, see section 422(c) of Pub. L. 104-204, set out as a note under section 1151 of this title.

Amendment by Pub. L. 104-204 effective Jan. 1, 1997, see section 421(d) of Pub. L. 104-204, set out as an Effective Date note under section 1801 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1979, see section 401 of Pub. L. 95-588, set out as an Effective Date of 1978 Amendment note under section 101 of this title.

§ 5313. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony

(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 1114(a) of this title; or

(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 1114(a) of this title.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 5307 of this title.

(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.

(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony.

(c) The Secretary shall not assign to any veteran a rating of total disability based on the in-

dividual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony.

(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after October 7, 1980, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

(e) For purposes of this section—

(1) The term “compensation” includes disability compensation payable under section 1151 of this title.

(2) The term “dependency and indemnity compensation” means death compensation payable under section 1121 or 1141 of this title, death compensation and dependency and indemnity compensation payable under section 1151 of this title, and any benefit payable under chapter 13 of this title.

(Added Pub. L. 96-385, title V, §504(a), Oct. 7, 1980, 94 Stat. 1534, §3113; amended Pub. L. 98-160, title VII, §702(17), Nov. 21, 1983, 97 Stat. 1010; renumbered §5313 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(b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 105-368, title X, §1005(b)(16), Nov. 11, 1998, 112 Stat. 3365; Pub. L. 109-461, title X, §1002(f), Dec. 22, 2006, 120 Stat. 3465.)

AMENDMENTS

2006—Subsecs. (a)(1), (b)(3), (c). Pub. L. 109-461 substituted “local, or other penal institution or correctional facility” for “or local penal institution”.

1998—Subsec. (d)(1). Pub. L. 105-368 substituted “October 7, 1980,” for “the date of the enactment of this section.”

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3113 of this title as this section.

Subsec. (a)(1). Pub. L. 102-83, §5(c)(1), substituted “1114(a)” for “314(a)” in subpars. (A) and (B).

Subsec. (b)(1). Pub. L. 102-40, §402(d)(1), substituted “5307” for “3107”.

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

Subsec. (e). Pub. L. 102-83, §5(c)(1), substituted “1151” for “351” in par. (1) and “1121”, “1141”, and “1151” for “321”, “341”, and “351”, respectively, in par. (2).

1983—Subsec. (a)(2). Pub. L. 98-160 substituted “paragraph (1) of this subsection” for “paragraph (1) of this section”.

EFFECTIVE DATE

Section effective Oct. 7, 1980, see section 601(d) of Pub. L. 96-385, set out as an Effective Date of 1980 Amendment note under section 1114 of this title.

LIMITATION ON PAYMENT OF COMPENSATION FOR VETERANS REMAINING INCARCERATED SINCE OCTOBER 7, 1980

Pub. L. 107-103, title V, §506, Dec. 27, 2001, 115 Stat. 996, provided that:

“(a) LIMITATION.—Section 5313 of title 38, United States Code, other than subsection (d) of that section, shall apply with respect to the payment of compensation to or with respect to any veteran described in subsection (b).

“(b) COVERED VETERANS.—A veteran described in this subsection is a veteran who is entitled to compensation and who—

“(1) on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date; and

“(2) remains so incarcerated for conviction of that felony as of the date of the enactment of this Act [Dec. 27, 2001].

“(c) EFFECTIVE DATE.—This section shall apply with respect to the payment of compensation for months beginning on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 27, 2001].

“(d) COMPENSATION DEFINED.—For purposes of this section, the term ‘compensation’ has the meaning given that term in section 5313 of title 38, United States Code.”

§ 5313A. Limitation on payment of clothing allowance to incarcerated veterans

In the case of a veteran who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for a period in excess of 60 days and who is furnished clothing without charge by the institution, the amount of any annual clothing allowance payable to the veteran under section 1162 of this title shall be reduced by an amount equal to $\frac{1}{365}$ of the amount of the allowance otherwise payable under that section for each day on which the veteran was so incarcerated during the 12-month period preceding the date on which payment of the allowance would be due. This section shall be carried out under regulations prescribed by the Secretary.

(Added Pub. L. 104-275, title V, §502(a), Oct. 9, 1996, 110 Stat. 3341; amended Pub. L. 109-461, title X, §1002(g), Dec. 22, 2006, 120 Stat. 3465.)

AMENDMENTS

2006—Pub. L. 109-461 substituted “local, or other penal institution or correctional facility” for “or local penal institution”.

§ 5313B. Prohibition on providing certain benefits with respect to persons who are fugitive felons

(a) A veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran is a fugitive felon. A dependent of a veteran who is otherwise eligible for a benefit specified in subsection (c) may not be paid or otherwise provided such benefit for any period during which such veteran or such dependent is a fugitive felon.

(b) For purposes of this section:

(1) The term “fugitive felon” means a person who is a fugitive by reason of—

(A) fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(B) violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(2) The term “felony” includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.